

**RECORDS IN THE
BRITISH PUBLIC RECORDS OFFICE
RELATING TO SOUTH CAROLINA**

**VOL. 31
1766-1767**

**MICROFILMED ·
BY
· WM. L. MCDOWELL**

Vol 31

1766

B P R O Journals B. I. vol 74

Whitehall 7th January 1766

At a Meeting of His Majesty's Council for Trade and Plantations
Present

Earl of Dartmouth

M^r Jenkins M^r Roberts M^r Dyson

M^r Tylherbert Lord Palmerston

The Secretary laid before the Board a Memorial presented to the Lords of the Treasury by M^r Boone late Governor of South Carolina stating the Salary withheld from him from the Provincial Treasury there, and desiring such Salary may be made good to him out of the Revenue of Salt Rents, which Memorial had been communicated to M^r Foxhall by M^r Lowndes Secretary to the Treasury Board, pursuant to an Order of that Board.

Their Lordships took the said Memorial into consideration & M^r Boone attending, They had some conversation with him upon this Subject, after which it was ordered, that the Draught of a Representation to His Majesty should be prepared proposing an additional Instruction to the present Governor to recommend to the Assembly in His Majesty's name to make good the Salary so unreasonably withheld.

The

21st January 1766

The Draught of a Representation to His Majesty upon the Memorial presented to the Treasury by M^r Boone, late Governor of South Carolina, respecting his Salary, having been prepared, was after some Considerⁿ agreed to, and ordered to be transcribed.

Read a Memorial of Charles Guth Esq^r Agent for South Carolina, praying the Boards Interposition for obtaining some regulation that may secure the coasting Trade of that Province from being molested by the Captains of His Majestys Ships of War for not complying with the regulations of the Act of Navigation.

Their Lordships took the said Memorial into Consideration together with a Letter from the Gov^r of South Carolina on the same Subject, dated Septemb^r the 8th 1766, and agreed to consider thereof on Friday next.

24th January 1766

A Letter to M^r Secy Conway, inclosing..... a Representation to His Majesty upon the Memorial of M^r Boone late Governor of South Carolina was signed.

Their

That Lordships took into further consideration the Memorial of the Agent for South Carolina, respecting the Inconveniences to which the Coasting Trade of that Province is liable to be subjected, from an Enforcement of the Provisions of the Act of Navigation and proposing a Remedy for the same.

That Lordships were of Opinion, that the State of the Coasting Trade of South Carolina, in respect to the Inconveniences apprehended, was deserving of consideration; but that as the propriety of what is proposed as a Remedy does depend upon the Effect it will have upon the Revenue, it is a matter proper for the Decision of the Lords Commiss^{rs} of the Treasury.

6th February 1766

The following Letters and Papers received by the Packet from New York yesterday were read and considered vizt.

Letter from W^m Bull Esq^r Sec^y Gen^l of South Carolina, to the Board, dated Nov^r 3 1765 relative to the opposition made in that Province to the execution of the Stamp Act. and enclosing

Copy

Copy of a Letter from the Inspector and Distributor of Stamps for S^c Carolina to the S^t Gov^t signifying the resignation of their respective Offices.

Letter from Lieut Gov^t Bull to the Board dated Nov^r 6th 1765 congratulating their Lordships on their appointments and promising to transmit Accounts of publick occurrences & papers.

11th February 1766

The following Letters & papers received this day by the Innville Packet, were read and considered v^{tyl}.

Letter from W^m Bull Esq^r Lieut Gov^t of S^c Carolina to the Board, dated Dec^r 19 1765 relative to the Stamp Act; Surveys of Land, the cultivation of Hemp & the importation of Negroes.

Letter from Lieut Gov^t Bull dated Dec^r 19th 1765 transmitting

Printed votes & Resolutions of the House of Assembly of South Carolina Nov^r 29th 1765 respecting the Grievances they labour under from sev^l late Acts of Parliament.

Journal of the Commons House of Assembly of S^c Carolina from the 1st of Jan^y 1765 to the

25th of Oct: following.

D^o from Janey 5th to August 9th 1765.

D^o from Oct^r 25th to Nov^r 24th 1765.

13th February 1766

Ordered, that the Secretary do transmit a copy of the Boards Representation to His Majesty on the Mem^o of M^r Breen, late Governor of South Carolina, to the Secretary to the Lords of the Treasury, to be communicated to that Board.

20th February 1766

Read an Order of the Committee of Council for Plantation Affairs, dated Feby^r 22^d 1766, directing this Board to prepare & lay before the Committee the Draught of an additional Instruction to the Gov^r of S^c Carolina, directing him to recommend to the Assembly to make provision for making good to the late Governor the Salary usually allowed to his Predecessors and refused to him.

The Draught of an additional Instruction having been prepared, pursuant to the said Order, it was approved, and a Report to the Lords of the Committee of Council thereupon was signed.

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6
24th June 1766

Their Lordships then took into consideration the State of S^c Carolina, and several Letters and papers reced at various times from the Lieut Governor of that Colony, were read, the Titles of which are as follows vizt

Letter from W^m Bull Esq^r Lt Gov^r of South Carolina to the Board, dated Oct^r 24th 1764, relative to Mr Poaug's erroneously informing him, that the Ballance due to Messrs Terrans, Greg & Poaug, on account of the French Protestants was satisfied by the last Tax Act.

Letter from Lt Gov^r Bull dated Dec^r 5th 1764 acknowledging the Receipt of some of the Board's Letters, and proposing that the Letters to him on matters, which require immediate execution or answer may be sent by Merchantmen.

Letter from Lieut Gov^r Bull, dated Dec^r 10th 1764, relative to the temporary Line of Jurisdiction, and the Catawba and other Indian Lands bordering on that Province.

Letter from Lieut Governour Bull, dated Dec^r 27th 1764, relative to the Fees in the Publick Offices, and to the Establishment of the German Protestants lately arrived there

Seven

7

Seven Acts and two Ordinances passed the 10th
& 25th of August, and 10th of Oct: 1764.

Letter from Lieut Gov: Bull, dated March 15th 1765,
relative to the State of the Settlement of the German
Protestants; military Stores; Forts; Courts of Justice.
Boundaries; Indian Affairs; and Acts lately passed

Naval Office Lists of Ships and Vessels cleared
from Charles Town from March 1st 1764 to March 1st 1765.

Journal of the Council from Dec: 25th 1763
to Janry 1st 1765.

D^o of the General Assembly from Janry 4th
1764 to Oct 6th 1764.

D^o of Assembly to Janry 1st 1765.

Letter from Lieut Gov: Bull, dated March 25th
1765. containing an Account of the loss of the Grenville
Packet.

Letter from Lieut Gov: Bull, dated June 5th
1765, relative to Acts lately passed by him, to Spanish
Ships coming in for Refreshment; Fort Charlotte; Indian
Trade; Major Terner's Expedition; and the Frenchman
taken last Winter near Fort d'Assomption.

Letter from Lieut Gov: Bull dated 25th Janry 1766
relative to the Reservation of Woodlands in Grants of
Land; M^r Wyley's survey of the Catawba Lands; the
Resurvey

2 8
Survey and Grant of the Lands reserved for the use
of the Chickesaws; and the Apprehensions of a
Negro Insurrection having proved abortive.

Naval office Lists of Ships entered and
cleared at Charles Town from Midsummer 1764 to Mid-
summer 1765.

Their Lordships then took into consideration
eight Acts passed in the Province of South Carolina
in August 1764, together with Sir Mat Lamb's Report
thereupon, and the said Acts and Reports were read.

Ordered that the Draught of a Letter to
Lord Charles Montagu, Governor of South Carolina be
prepared.

4th July 1766

The Draughts of Letters to the Governors of.....
South Carolina, having been prepared pursuant to order,
were approved, transcribed and signed.

10th July 1766

Read the following Letters and papers received from
the Lieut Gov of South Carolina. Vizt

Letter from W^m Bull Esq Lieut Gov of S Carolina
to the Board, dated May 3^d 1766, containing Remarks on
two

9
two Acts lately passed there and transmitting

Abstract of all Grants of Land from the first
Establishment of South Carolina, specifying the Names of
the Grantees, the time when granted, quantity of Acres
& the Quit-rents. 400 to Oct^r 31st 1765.

Two Acts passed in March 1766.

Letter from Lieut. Gov^r Bull, dated May 5th
1766 relative to Proceedings on the Refusal of Dougal
Campbell Esq^r Clerk of the Court of Common Pleas to
enter up an Order of the Assistant Judges of that
Court, and transmitting

Eleven papers on that Subject.

Letter from Lieut. Gov^r Bull dated May
20th 1766 relative to his suspending payment of a Fine
imposed on Dougal Campbell Esq^r for his disobedience
to the Orders of the Assistant Judges in Court.

Copy of Mr Campbell's Petition on the
Order of the Court.

Copy of the Lieut Governor's Order to
suspend payment of the Fines.

Ordered, that Copies be made of such of the
Lieut Governor's Letters and papers as relate to the
Case of the Clerk of the Pleas, and the Proceedings
of the Assembly and of the Assistant Judges thereupon,
to

to be laid before His Majesty in Council, and that the Draught of a Representation to His Majesty thereupon be prepared

11th July 1766

The Draught of a Representation to His Majesty, upon the papers received from the Lieut Gov^r of South Carolina, relative to the proceedings of the Assembly and Assistant Judges against the clerk of the Pleas having been prepared pursuant to Order, was approved, transcribed and signed.

29th July 1766

Read a Letter from William Bull Esq^r Lieut Gov^r of S^c Carolina, to the Board, dated June 9th 1766, relative to the Boundary Line between the Cherokees and that Province, and to an Ordinance prohibiting the Exportation of Rice.

South Carolina Gazette, containing the Proclamation & Ordinance prohibiting the Exportation of Rice

27th August 1766

A Commission under the Great Seal of Great Britain, bearing date the 15th instant, constituting the
great

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great Officers of State, together with the Earl of Hillsborough, Soame Jenyns, Edw^d Eliot, Geo Rice, John Roberts, Jeremiah Dyson and Wm Fitzherbert Esq^r and Henry Viscount Palmerston Commissioners for Inspecting and improving the Commerce & Colonies of this Kingdom, was opened and read.

Read a Letter from the Earl of Shelburne, one of His Majesty's Principal Secretaries of State, dated the 26th inst^t signifying His Majesty's Commands as to the manner in which the business of Commerce and the Colonies is to be hereafter taken up and proceeded upon in the several Offices of Government.

The following Letters & papers of Correspondence, received since the dissolution of the late Commission, or which are referred to in the said Letters and papers, and appear not to have been yet read at the Board, were laid before their Lordships, and it was Ordered, that such of them as do not relate to moneys granted upon Estimates should be copied to be transmitted to the Earl of Shelburne, in conformity to the mode of proceeding in the Business of Commerce and the Colonies prescribed by his Lordship's Letter to the Board of Yesterday's date

Letter

Letter from Lord Cha^s Grenville Montagu Gov^r of
S^c Carolina, dated June 29th 1766, notifying his arrival in
that Government, - relative to the Boundary Line between
that Province & the Cherokee Indian Country & the
late Governor's Salary.

Report of the Commee of the lower House of
Assembly on the late Governor Borne's Salary.

Plan of a Boundary Line between that Province
and the Cherokee Indian Country.

List of Ships entered and cleared at Charles
Town from Michaelmas 1765 to Lady Day 1766.

6th November 1766

The Secretary laid before the Board several
Letters and papers (the Titles of which, are as follows)
received from the Governors and other Chief Officers
in His Majesty's Colonies in America & elsewhere, since
the Adjournment of the Board on the 3^d of Sept^r,
and the said letters and papers having been read,
it was Ordered, that Copies of several of them, not
appearing to be Duplicates of what may have been
transmitted to the Secretary of State, should be made
to be communicated to the Earl of Shelburne, and that
the

the Secretary should transmit such copies to his Lordship's Secretary for that purpose.

Letter from Lord Chas Greville Montagu, Gov. of South Carolina dated August 1st 1766 transmitting

Minutes of Council from Oct^r 1765 to June 1766.

Journal of Assembly from 7th Janry to 2^d of July 1766.

Account of the Proceedings of the Lawyers about the Stamp Act.

Observations by the Chief Justice on the Expediency of enlarging his Authority and augmenting his Salary.

Naval Office Lists of Vessels entered & cleared at Charles Town in Midsummer Quarter ending 5th July 1766.

Letter from Lord Chas Greville Montagu, dated Sept^r 19th 1766 transmitting

Some further Observations of the Chief Justice upon matters that occurred in the Province since August 7th 1766,

Deposition of James O'Brien of Charles Town Gentleman.

Mr Oldham's Declaration in Support of the Chief Justice's assertion in regard to the Deputy Provost Marshall.

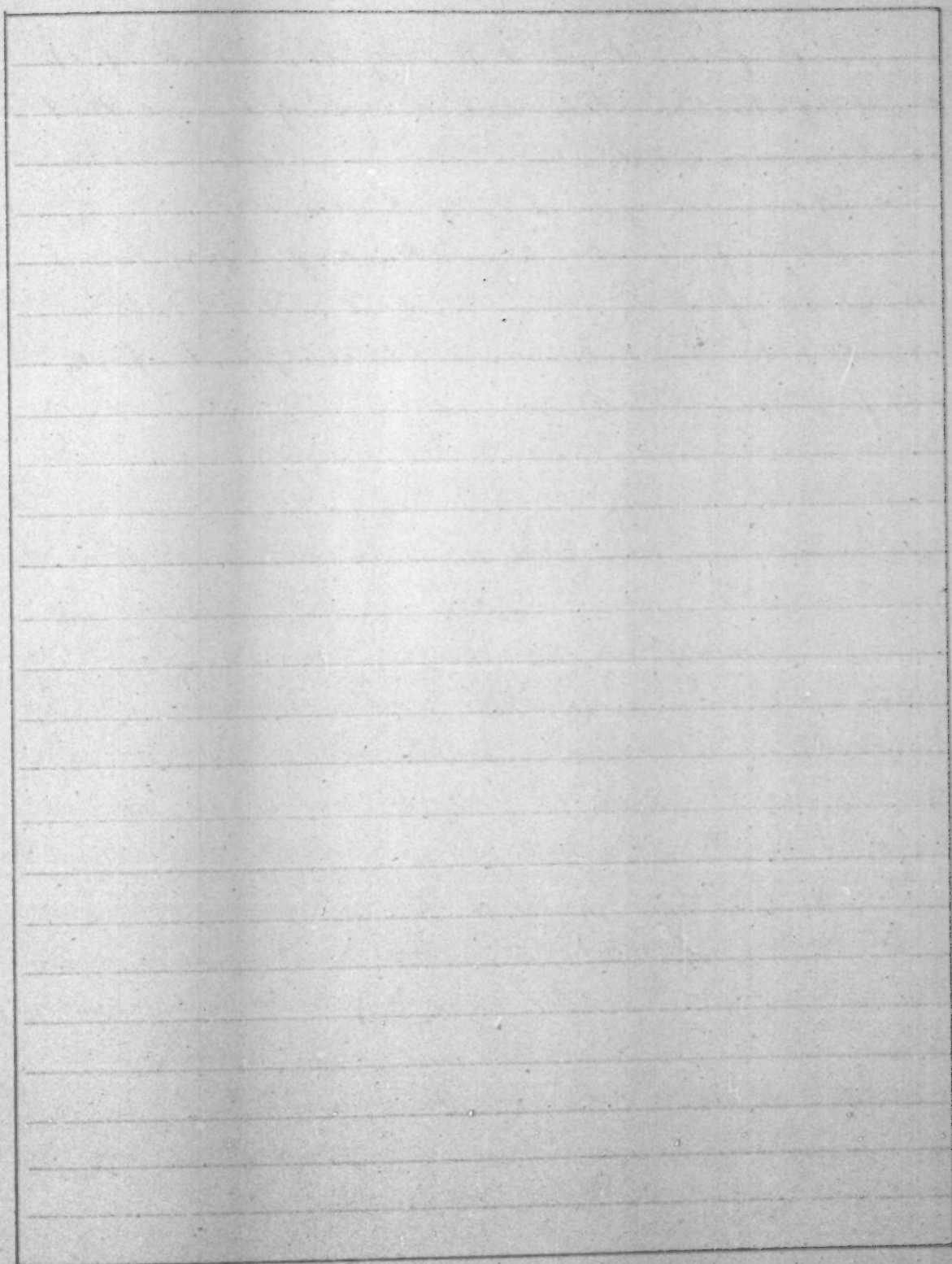
List

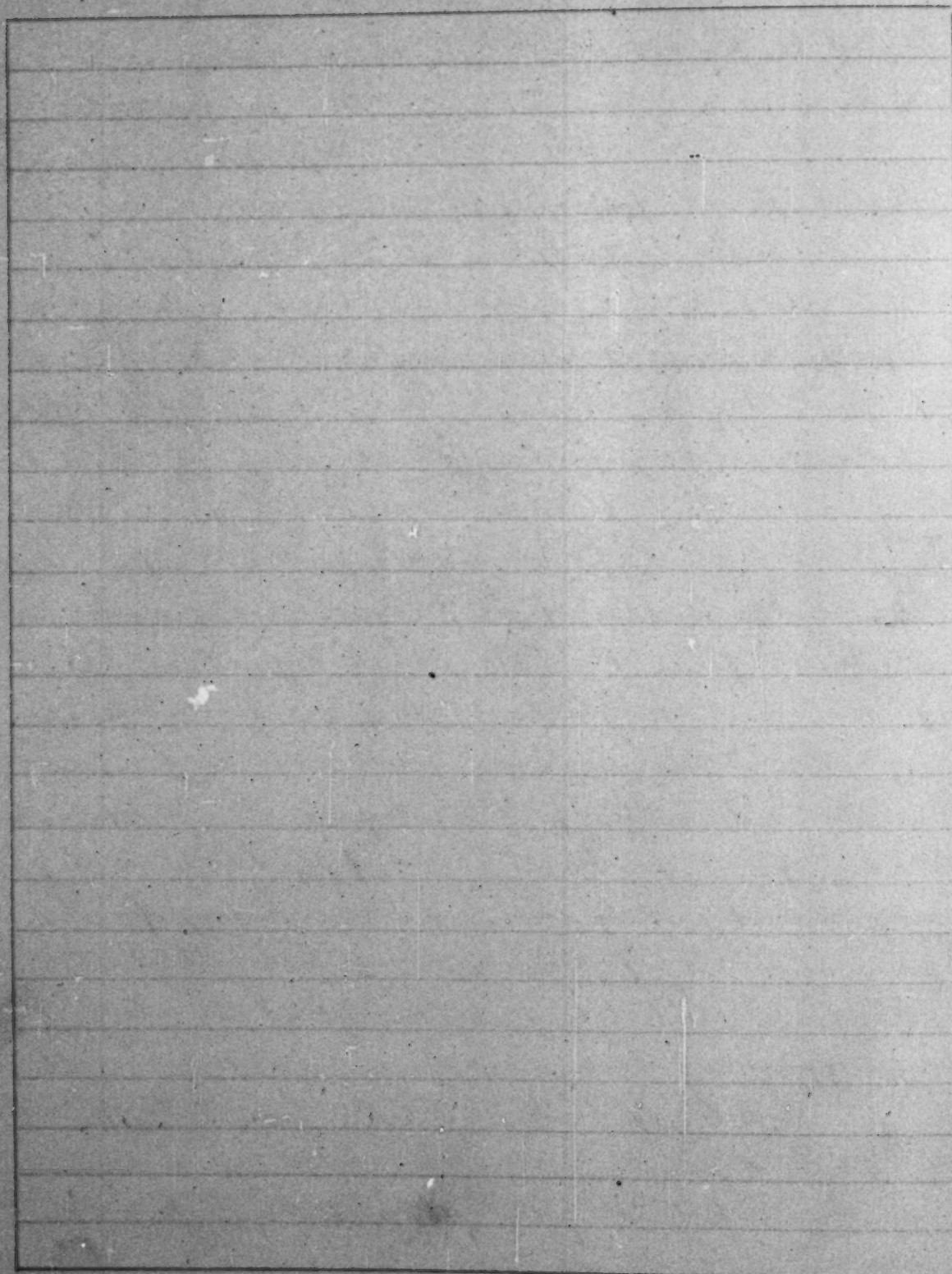
List of Fees to be taken by the clerk of the Court of Common Pleas, and Fees charged on a Writ of Enquiry executed.

Three Acts passed July 2^d 1766.

Letter from Mr. Roger Pinckney, Deputy Provost Marshall of S. Carolina, dated August 30th 1766 vindicating his conduct against the complaint of the Chief Justice.

* * * * *





B P R O South Carolina B I Vol 29 p 210

(24th January 1766)

To the King's most Excellent Majesty
May it please Your Majesty

We have taken into Our Consideration a Memorial presented by Thomas Boone Esq. late Your Majesty's Governor of South Carolina to the Lords Comm^s of Your Majesty's Treasury, and by their Lordships referred to us, setting forth, that the Assembly of that Province, irritated (as he conceives) by a supposed Breach of Privilege, had for Two Years and a half, during his Administration of that Government, persisted in withholding from him the usual Stipend or Salary of Six hundred Pounds Sterling p^a Annum; & praying their Lordships to issue an Order in his favour on the Quit Rents of Your Majesty's Province of South Carolina for Twelve hundred and fifty Pounds Sterling, being the Amount of the said usual Salary for Two Years and a half, the Space of Time, which he passed in that Colony in the actual Execution of his Office.

Whereupon We beg leave humbly to represent to Your Majesty,

That the Point in Dispute, which it seems,
merely

merely related to matter of Privilege, does not appear to us to be a just Reason for the Assembly of that Your Majesty's Province to withhold a Salary and Allowance from Your Majesty's Governor, which has for Fifty Years past been uninterruptedly allowed, and which (as he represents) was never withheld from any of his Predecessors within that Period before.

And for as much as a Precedent of this Nature may, as we conceive, be justly apprehended to operate to the prejudice & discouragement of Your Majesty's Service in that Province, by awing and deterring Your Majesty's Governors from the due & faithfull Execution of their duty, and the proper Exertion of those legal Rights & Privileges, which they are by Your Majesty's commission'd to support; We are humbly of Opinion, that Your Majesty's Governor of South Carolina should, by an additional Instruction from Your Majesty for that purpose, be forthwith directed to recommend it earnestly to the Assembly of that Province, and to require of them, in Your Majesty's Name, to provide in the usual manner for making good to M^r Boone, for the time he continued in the Government, the Salary, which has been usually allowed to Governors of that Province, in consequence

consequence of the Instructions given by Your Majesty
 & Your Royal Predecessors.

All which is most humbly submitted.

Whitehall
 Jan^r 20. 1766 }

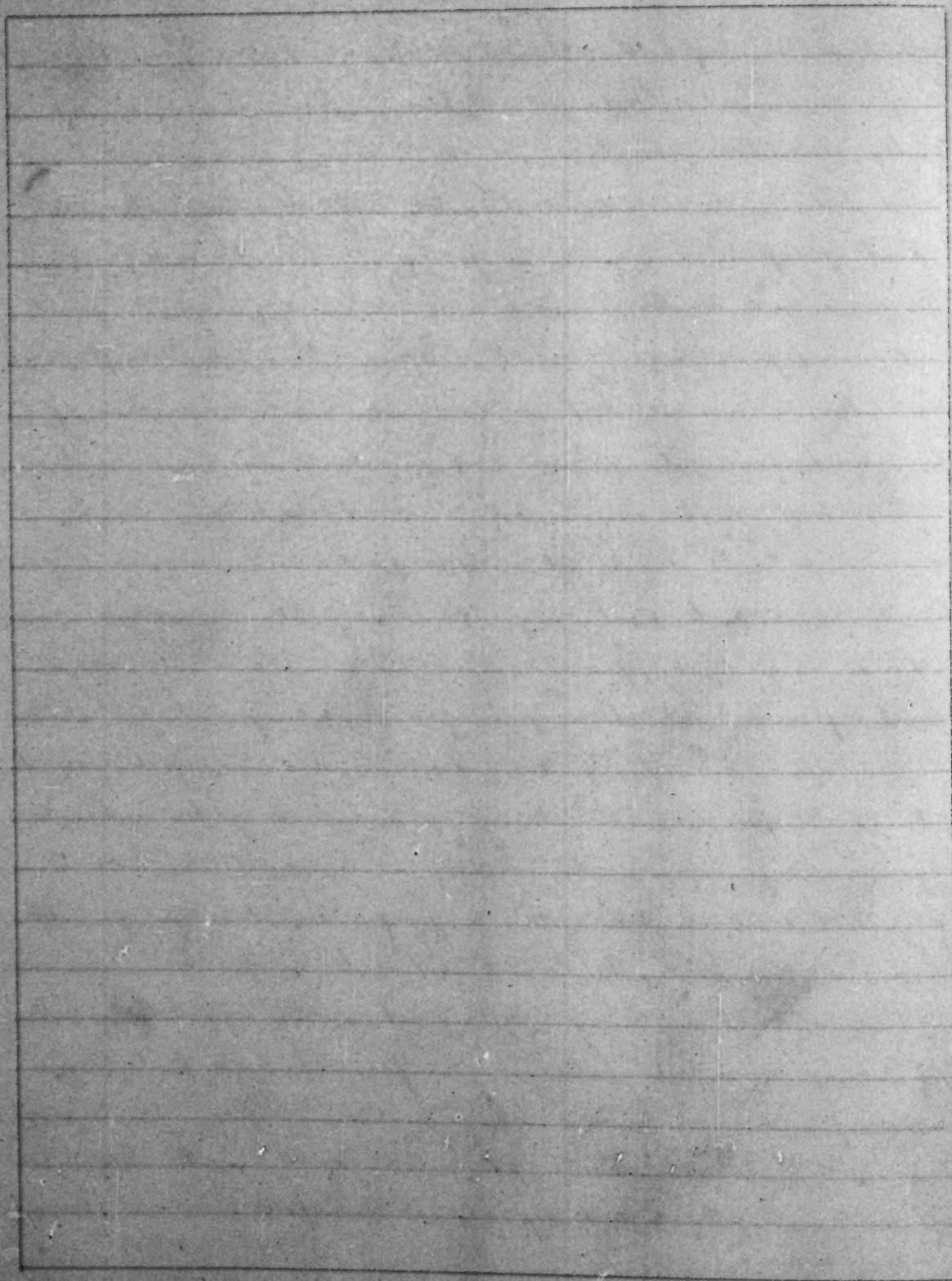
Dartmouth

Geo. Rice

J. Dyson

W^m Fitzherbert

Palmerston



B. P. R. O. South Carolina D. I. Vol 31. A. 21.

Charles Town January 25th 1766

My Lords

In obedience to His Majesty's Commands that proper Reservations for fuel for His Majesty's Garrisons shall be made in Lands hereafter to be granted contiguous or adjacent to any Forts or Fortifications in this Province, I have ordered an entry thereof to be made in the Council Journals, & I shall take care that such reservations are accordingly made.

I have the satisfaction to acquaint your Lordships that last year foreseeing the inconvenience which might happen in such cases as soon as I had fixed on the Spot for building Fort Charlotte, I ordered a Tract of 430 Acres to be surveyed around it, & to prevent its being granted any time hence by surprise upon the Governor's Inadvertance thereto, I granted it to the Secretary of the Province for the time being subject to the direction of the Governor & Council. This being very good, will afford Pasture, planting, & woodland enough for the comfortable uses of the Garrison.

At Fort Johnson in this Harbour, 100 Acres were purchased by the Public for Firewood, but
as

as it has been long since wasted & cut down, I have hitherto prevailed on the Assembly to supply the small Provincial Garrison with wood, as also the Officers & few Soldiers of Kings Troops who are in Town.

There is a Tract of 70 Acres Wood and Pasture round Fort Lyttleton on Port Royal; and at Fort Prince George in the Cherokee, the Woods are not private property; fuel is cut as wanted, and I have obtained a Cart and Horses lately from the Assembly to ease the Soldiers who used to carry it above a Mile, as there was a necessity to have an extended Esplanade round the Fort in the midst of an Ambuscading People.

I am honoured with his Majesty's Commands signified by your Lordships relative to the Payment of half the Expence of Mr Wyleys account for Surveying the Catawba Lands 1763, and as there is no contingent Fund in this Province applicable to that Service, I shall take care to recommend to the Assembly to provide for it in the first Tax Act that is passed.

The Chickasaws settled near Fort Moore, having complained that several Trespasses were committed
on

on the Lands reserved for their use, under pretence that their Bounds were not known, I had their Lands resurveyed & plainly marked and granted them in Trust to the Secretary of this Province for their use; subject to the direction of the Governor & Council, to prevent any Grants passing by surprise to other Persons.

I have the pleasure to acquaint your Lordships that the apprehensions of a Negro Insurrection last December happily proved abortive. The vigorous execution of our Militia & Patrol Laws for 14 Days before and after Christmas Day prevented the festivity and Assembling of the Negroes usual at that Time, and disconcerted their Schemes. But as there are several large Parties of Runaways still concealed in large Swamps, not easily accessible by the ordinary way of performing the Patrol duty, I have caused 47 Catawba Indians to come down, whose manner of hunting renders them very sagacious in finding an Enemy by their Track, and who are a terror to our Negroes, to penetrate into these difficult recesses and kill take or disperse them, that the Indians may not by mistake do wrong to any innocent Negro, they are to be joined by a Party of very alert White Men in the

the Pay of the Province in this Service, I hope the appearance of these Indians will strike an awe upon the bold Negroes who may incline to form any such destructive Schemes, & discourage such thoughts in them for the future.

I have the Honor to be with the greatest respect

My Lords

Your Lordships

Most Obedient

To the Right Honorable & Most Humble Servant
The Lords Commissioners (W^m Bull)
for Trade & Plantations at Whitehall

Recd March 12
Read June 27 } 1766

B P R O A & H I Vol 223 p 131

Charles Town February 6th 1766

Sir

I had the honor of acquainting you in my Letter of 17th December last that I had permitted Vessels to carry supplies to the Kings Troops altho our Ports were shut up to all other purposes by the opposition to the Execution of the Stamp Act.

And from my Knowledge of the approaching distress of Pensacola an Infant Colony as well as numerous Garrison, I thought it my duty to prevent their wants, & gave permission to a Merchant at his own risque to carry Beef, Pork Rice & Liquors to that place with directions that the Preference in the disposal should be given to the Kings Troops, and that no unfair advantage might be taken, I acquainted Gov^r Johnstone with the conditions of my permission. Since that vessel sailed, I have received an Application from Brigadier Taylor at St Augustine, to permit a vessel, which he has engaged to carry him to Pensacola, to be laden with various necessaries, which I immediately complied with from the same motives & hopes of his Majesty's approbation on these extraordinary occasions.

But I am now to acquaint you Sir that
upon

upon the arrival of Col^d Peter Randolph Surveyor
 General of his Majesty's Customs from Virginia in this
 Province a few days ago, & his informing the People
 as he passed that He had advised the officers of
 the Customs to clear vessels, upon the Stamp Officers
 refusing to issue Stamp Papers, and that Governor
 Tanquer had given such Certificates also under the
 Seal of Virginia, where in consequence thereof vessels
 had been constantly cleared since the 1st of November
 last, And that the same was practiced in every
 Province in Mr Randolph's district to the Northward.
 The People of this Province became very uneasy under
 an Embargo which they had now borne patiently for
 13 Weeks, every one becoming more sensibly penetrated
 with the irksome Restraint, the Planters, at finding
 no demand for their Produce, & the Spring beginning
 to advance towards the planting and ensuing crop;
 the Merchant at the total stop to his making Remit-
 tances to Great Britain & other Countries; And the Num-
 ber of Sailors increasing Fast by the daily arrival of
 Ships, being now near 1400 in this Port, lying idle, and
 the hitherto tolerably well governed, now beginning to
 grow licentious; all these circumstances conspiring, the
 public Tranquility, which has been happily preserved ever
 since

since the 1st of November, was threatened and greatly endangered. Their murmurs for opening the Port grew louder every day; And various applications were made to me by them, & by the Assembly for that Purpose, urging it here, as it was done in Virginia & other Northern Provinces. Thus pressed, under these circumstances, in order by an Expedient, & by moderation to effect what I could not do by Force, the preserving the Public Peace a little longer, as I am in expectation of receiving in a few Weeks the Kings Commands in relation to this extraordinary Situation of North America, I have been induced to grant a Certificate to such Captains of Ships as request it, that the Distributor of Stamps for this Province having signified to me by letter that He determined to adhere to his Public Declaration not to issue any (until the sense of the Parliament is known on the American Petition) & that accordingly He will not issue any. No Stamp Papers are now to be had in this Province. Altho this Certificate becomes necessary only on the impracticability of executing the Stamp Act at present, yet as such an Instrument is rated at 5^d in the Stamp Act, I order that Sum to be taken to secure, so far as I am able, the Kings revenue, for which I shall be

be accountable whenever His Majesty's Pleasure is signified thereupon, tho' this Article will scarce amount to £20 Sterling And that I may be free of all suspicion of any interested Views I take no fee myself for this Service. Col^o Randolph the Surveyor General has signified to the Collector his desire that He would clear Vessels as usual, & the Naval Officer does the same, which they are compelled to do from the apprehension of Popular Tumults of Violence upon a Refusal.

I must take the liberty to observe, that I have the greatest reason to apprehend, that any Attempt to enforce the Stamp Act, before the Receipt of the Kings Pleasure upon the Petitions which have been sent from America, concerning the Act, will occasion much confusion & some bloodshed, & will not in all human probability establish the regular Execution of the Act, tho' I doubt not but His Majesty's wise Measures will succeed therein

I am now to intreat you, Sir, to do me the Justice to believe, that nothing but the above-mentioned powerful Considerations could have prevailed on me to take this Step, which I have had the Honor of laying before you, and humbly to hope that from your Countenance and Representation, it will appear in such a light that His Majesty will be graciously pleased to think favourably of me thereon. I have the Honor to be with the greatest Respect, Sir.

To The Right Honourable
Henry Seymour Conway Esq
One of His Majesty's Principal
Secretaries at St James's

} Your most obedient and most humble Servant,
W^m Bull

B. P. R. O South Carolina B. T. Vol 29. p 363

(10th February 1766)

Letter from Mr Fownall to Charles Lowndes
Esq^r Sec^y to the Lords Comm^r of His Majesty's
Treasury.

Sir

Inclosed I have the honour to send you
a copy of the Representation made by the Lords
Comm^r for Trade & Plantations to His Majesty upon
the Memorial of Mr Boone, late Governor of South
Carolina, communicated to me with your Letter of
the 24 of last December.

I am,

with great regard

Sir,

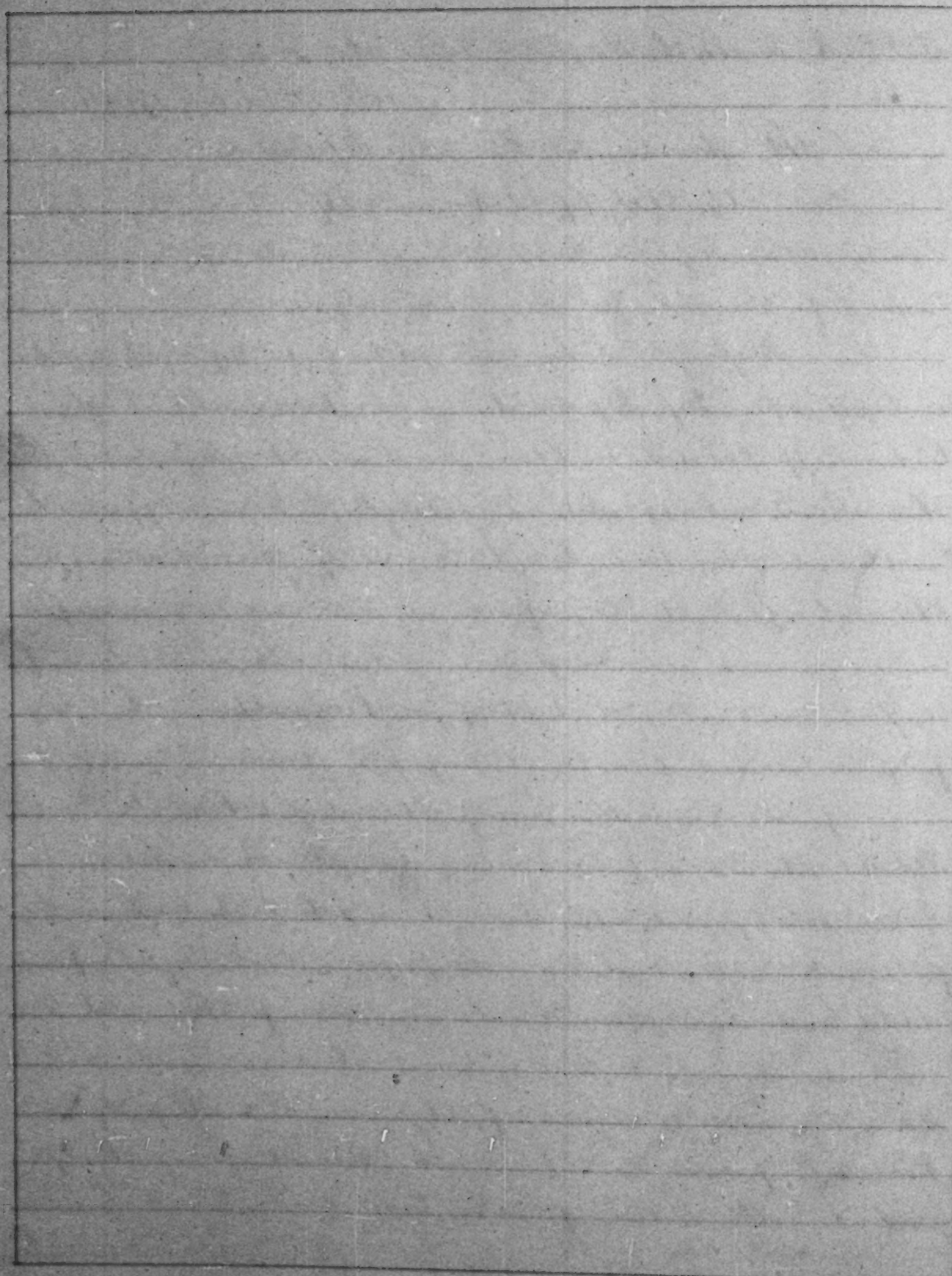
Your most Obed^t

humble Servant,

John Fownall Sec^y

Whitehall

Feb^y 10. 1766



B P R O South Carolina B I Vol 21 A 15.

(22nd February 1766)

At the Council Chamber Whitehall
the 22^d of February 1766

By the Right Honourable the Lords of the Committee of Council for Plantation Affairs.

His Majesty having been pleased to refer unto this Committee a Report of the Lords Commissioners for Trade and Plantations upon a Memorial presented by Thomas Boone Esq^r late His Majesty's Governor of South Carolina, to the Lords Commissioners of the Treasury, relative to the Assembly of the said Province having for two years and an Half, during his Administration of that Government, withheld from him the usual salary of five hundred pounds Sterling per Annum — The Lords of the Committee having this day taken the said Report into their Consideration, are pleased to order, as it is hereby ordered, That the said Lords Commissioners for Trade and Plantations do prepare a Draught of an Additional Instruction to the Governor of the said Province, directing him to recommend it earnestly to the Assembly, and to require of them, in His Majesty's Name, to provide in the usual Manner for making good to Mr Boone, for the time he continued in the Government.

Government, the Salary which has been usually allowed
to Governors of that Province in consequence of the
Instructions given by His Majesty and his Royal Prede-
cessors; and lay the same before this Committee.

Robert Walpole

Recd Feby 22^d }
Read . . . 25th } 1766

B. P. R. O. South Carolina B.T. Vol 29 p 366.

(25th February 1766)

To the R^t Honble the Lords of the Committee of
His Majesty's most Honble Privy Council for Plantation
Affairs.

My Lords

In pursuance of your Lordships Order
of the 22^d Instant, We have prepared, & herewith
beg leave to lay before Your Lordships a Draught
of an additional Instruction to Lord Chas Greville
Montagu, His Majesty's Governor of South Carolina,
requiring him to recommend to the Assembly of that
Province to provide for making good to Tho^s Boone
Esq^r, for the time he continued in the Administration
of that Government, the Salary usually allowed to
the Governors of the said Province.

We are

My Lords, &c

Dartmouth

Soame Jenyns

Geo. Rice

J. Dyson

W^m Titcherbert

Whitchall

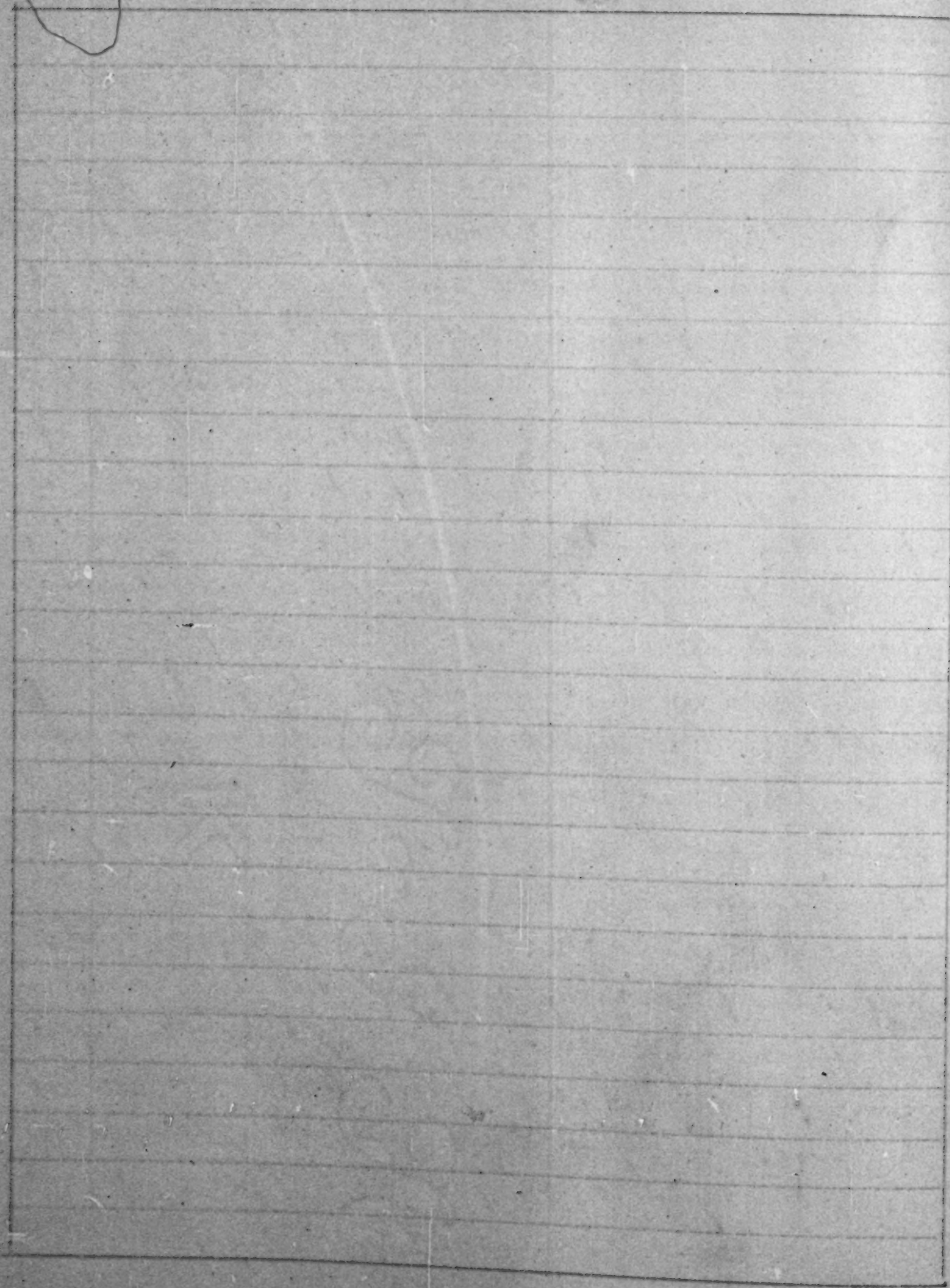
Febr^y 25 1766

Additional

Additional Instruction to Our Trusty and Wellbeloved Charles Greville Montagu Esq. commonly called Lord Charles Greville Montagu, Our Captain General & Governor in Chief in and over Our Province of South Carolina in America. Given at Our Court at St. the first day of March 1766 in the sixth year of Our Reign.

Whereas it hath been represented unto Us, that the Assembly of Our Province of South Carolina, did withhold from Thomas Boone Esq. Our late Governor of the said Province, for Two Years and a half, during his Administration of that Government, the Salary or Allowance which had for fifty years past been uninterruptedly allowed, and which was never within that Period withheld from any of his Predecessors; and for as much as a Precedent of this nature may be justly apprehended to operate to the prejudice and discouragement of Our Service in that Province, by awing and deterring Our Governors from the due and faithfull Execution of their Duty, & the proper Exertion of those legal Rights & Privileges, which they are by Us commissioned to support, It is therefore Our Will & Pleasure and you are hereby directed earnestly

estly to recommend to the Assembly of our said Province
to provide in the usual manner for making good
to the said Thomas Borne Esq^r for the time he con-
tinued in the Government of that Province, the Salary
which has been usually heretofore allowed to Our
Governors of that Province, in consequence of the In-
structions given by Us and Our Royal Predecessors.



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B P R O South Carolina B T Vol 21 N 28

Charles Town May 3^d 1766

My Lords.

In obedience to the Commands which I had the honour to receive from your Lordships bearing date July 13 1764 which came to my hands on the 6th of December following, I now transmit to your Lordships an abstract of the Records of all Grants of Lands from the first Establishment of this Colony down to the 1st of November last since which day no Grants have been signed on account of the opposition to the Stamp Act, as all Warrants and Grants of Lands must be on Stamp Paper. I have caused it to be bound for the greater Ease of the Persons who are to peruse it. I have given orders to the Secretary to continue the Abstracts when Grants shall hereafter be passed, to be transmitted half yearly to your Lordships

I have the honour to send your Lordships two Acts of Assembly being all that have been passed in this Session. One to prohibit the Exportation of Corn and Peas for 7 Months on acct of the great Scarcity of Provisions in this Province occasioned by a great Drought the last Summer, and

a

a great deluge of rain in harvest Time. The other Act is to postpone till next December the Payment of the Taxes that was to have been paid this Spring from a scarcity of money, which the Stagnation of Trade & business on account of the present Situation of America, has caused, I am to observe to your Lordships that this will be attended wth no inconvenience to the Public Creditors, for after the Tax Act is passed certificates of the Sum due are given to each, these circulate readily as they are regularly sunk when the money assessed by the Act is brought into the Treasury.

The clerks of the Council & Assembly have received my Directions to bring up their Journals in order to be transmitted to your Lordships by the next Packet. Tho I am sorry to acquaint your Lordships that very little attention is paid to the real and ordinary Service of the Province by the Assembly as yet this Spring. For the State of Suspense with regard to the Fate of the Stamp Act which so universally prevails in North America clogs every wheel of usual business, while the same Anxiety quickens their Impatience & their Resolutions to proceed on all other business, tho without Stamps.

I have thought it my Duty upon all occasions to conduct myself in the Administration of Government with as much Lenity, moderation and indulgence as could consist with the positive Injunctions of the Law, in which I flatter myself I shall be honoured with His Majestys approbation, as I have therein aspired to an humble imitation of those Royal Virtues, which reflect so much much Lustre on our most Gracious Sovereign, & diffuse so much Happiness to the Subject

I have the Honor to be with the
greatest Respect

My Lords

Your Lordships

most Obed^t & most

To the R^t Honble The Lords
Commissioners for Trade & Plantations

Humble Servant
W^m Bull

Recd

Read July 10

1766

(Inclosure A 29)

Abstract of all Grants of Land from the
first establishment of South Carolina, specifying the
Names of the Granters; the time when Granted;
Quantity

Quantity of Acres, and the Quit Rents ^{vs} to Oct 31 1765.
Bound separate.

(The reference to this volume of Grants is Colonial
Entry Book. Vol 23.)

B P R O. South Carolina B.T. Vol 21 A 30

Charles Town May 8th 1766

My Lords

Soon after I had yielded to the universal & urgent importunities of the People for the Ease of the Marine Commercial Interest by granting qualified Certificates to Ship Masters that no Stamp Papers were to be had, the popular clamours began to extend further, demanding the Courts of Justice to proceed in Civil Causes. And in the beginning of April last Arguments were heard in open Court by several of the Lawyers for and by the Attorney General against opening the Courts in the present Situation of the Stamp Act. Whereupon the four assistant Judges being unanimously of opinion that there was a legal impossibility to execute the Stamp Act, & that therefore the Courts should proceed as if there was no such Act, contrary to the opinion of the Chief Justice, & on Motion for Judgement in a Cause then depending ordered the Clerk Dougal Campbell to enter it up, which he refused as being repugnant to the Stamp Act, which in such Case required Stamp Paper.

The Assistant Judges applied to me to suspend Mr Campbell for disobeying their orders, I referred this matter

matter to the Council for their advice, who upon hearing the Chief Justices Reasons against opening the Courts in the present Situation of affairs & Mr Campbell's Defence gave their advice that I ought not to suspend Mr Campbell. I thereupon wrote a Letter to the Assistant Judges acquainting them that I could not comply with their Request.

A few days after I received an Address from the Assembly presented by the whole House desiring me to suspend Mr Campbell to which I replied I could not do it consistent with the Kings Instruction. The Assembly repeat their request with more importunity, I still thought it my duty to adhere to my first opinion. Whereupon the Assembly on the 4th instant came to several Resolutions, the last whereof is very extraordinary & alarming

Disputes with Assemblies, my Lords, are a Situation on the most necessary occasions, not to be wished by Governors, even those whose private Circumstances render them ever so independant; I have on my part always studiously avoided them, as far as my Duty to the Public Trust, reposed in me by the King, would permit. But in the present case I considered my displacing Mr Campbell for his having
paid

paid Regard to a British Statute as an Act of repugnancy to it in myself. I have according to His Majesty's 43^d Instruction to Governor Dorne transmitted to your Lordships a copy of all the proceedings in this case, that I may represent the matter fully & distinctly to your Lordships in order to be laid before the King, whereby I am willing to hope it will appear to His Majesty that there was not good & sufficient cause to displace Mr Campbell. If I have been mistaken I humbly intreat your Lordships to impute it to my Zeal to maintain the Respect & obedience due to a British Act of Parliament, especially as the Inconvenience complained of by the People might well have waited a few days longer for the Parliamentary Determination upon their Petitions, which we knew had been before the Parliament since January.

I have the pleasure to acquaint your Lordships that within these two days we have received the agreeable news from various Quarters that under His Majesty's Royal Patronage the Stamp Act is repealed, upon which prospect of universal Satisfaction & Tranquility being restored in America & the grateful acknowledgements of Royal Favour, & of kindness in the Mother Country I beg leave to make my Compliments
 &

of Congratulation to your Lordships, with my most Sincere thanks for your Lordships powerful Services therein

I have the Honor to be with the greatest respect

My Lords

Your Lordships

To the Rt Honble The Lords

Most obedient &

Commissioners for Trade &

Most Humble Servant

Plantations at Whitehall

W^m Bull

(Inclosure N^o 1)

To the Hon^{ble} William Bull Esq^r Lieutenant Gov^r
and Commander in Chief in and over His Majesty's
Province of South Carolina.

The Humble Representation of the Assistant Judges
of the said Province.

That at the Adjournment of the Court of Common Pleas
held the 24th day of March last, A Motion was made
for judgement in a certain Cause depending, And after
hearing Arguments for and against the motion the
Court took till the Return day being Tuesday last to
give their opinion

That on that day all the Judges being present
a solemn adjudication was pronounced, That Judgement
should

Should pass in the usual manner as had been heretofore done in such cases; only his Honor the Chief Justice dissented; That agreeable to the said Adjudication Dougall Campbell Esq: Clerk of the Court was directed to enter an Order for the said Judgment on Record as was his bounden Duty, and the constant and invariable practice of the said Court.

That the said Dougall Campbell Esq: in manifest violation of his known duty, and in contempt of the Authority of the Court, publicly disputed and questioned the legality of the Judgment the Court had given, and refused to carry their order into Execution.

That altho the Court with the utmost tenderness and lenity admonished the said Clerk of the Impropriety and Absurdity of his conduct, yet the said Dougall Campbell obstinately persisted in refusing to obey the Reiterated injunctions of the Court for entering the said Judgment, as the duty of his Office indispensibly should have obliged him to do; Whereof the Court not being permitted by Law to Adjourn, but for a distinct day were put to the necessity in order to prevent the effect of their Judgment

Judgment being eluded, and the Plaintiffs defeated of his right, by the unpresidential and unjustifiable behaviour of the Clerk, to Nominate a by stander to enter the minutes of the Resolutions of the Court.

That the Clerk by thus Assuming to himself a right of Judging of the propriety or legality of any Judgment given by the Court; or of entering or Refusing to enter their Resolutions as they coincide or not with his own Opinion, is in effect usurping the Authority of a Superior Court; and taking upon himself to controul and overrule their most solemn Adjudications, to the total Inversion of all Law, Order decency and decorum, and has an apparant tendency to bring the Courts of Law, and its Judges into the utmost Contempt, Insignificance and dishonor.

The Assistant Judges therefore humbly hope that so dangerous an Impediment and Obstruction to the legal natural and Constitutional administration of the Laws, may be removed; and so daring an Outrage and attempt Subversive of all subordination and Authority may be discountenanced.

All which is Humbly Submitted

Charles Town
April 5th 1766.

By your Honors most Obedient & most Humble
Servants N^t Pringle, Raw^d Lowndes
Benjamin Smith, Daniel Doyley, South

(Inclosure N. 2.)

South Carolina

To the Honble William Bull Esq^r Lieut Govern-
or and Commander in Chief in and over
the Province aforesaid.

The Petition of Dougal Campbell Clerk of His
Majesty's Court of Common Pleas in the said Province
Humbly Sheweth.

That on the third day of March last
a motion was made in the said Court by Thomas
Bee Esq^r Attorney for the Plaintiff in a certain Cause
wherein one James Jourdan was Plaintiff and Joseph
Law Defendant wherein having set forth that the
declaration had been regularly Filed the rule to plead
taken out and served previous to the first of Nov
last and that the time for pleading had long
since expired all which being acknowledged by the
Defendants Attorney he M^r Bee moved that he
might have an order for Judgment entered in the
usual and accustomed manner as no Stamp'd Paper
was to be had That the motion was supported by
several Gentlemen of the Bar and was opposed by
the Honble Egerton Leigh Esq^r His Majesty's Attorney
General when the matter being very fully argued the
Court

Court on the 4th of March to which day it had adjourned, agreed to postpone the further consideration of the Motion until Tuesday the first of April being the return day.

That on the said fourth of March a Petition was presented to the Court by Jas. Parsons Esq^r from several of the Merchants, Traders, Freeholders and other Inhabitants of this Province which being received and read was found to contain a Prayer that the Process of the Court might be issued and that the Clerk and the Attorneys thereof might be ordered to carry on business in the usual manner the consideration of which Petition was also postponed until the said first of April That the return day being come & the Court being met Their Honors, the Assistant Judges did by Mr. Justice Lowndes declare it as their unanimous opinion for which they gave their reasons at large that Judgement be ordered for the Plaintiff agreeable to the Motion that the same be entered in the usual manner and as heretofore been done no Stamp Papers being to be had and in answer to the said Petition declared it as their further opinion that the Process of this Court be issued in the usual manner to

to any Persons who shall require and apply for the same that there may no longer be a Complaint that Justice is either denied or delayed. That thereupon his Honor the Chief Justice at large delivered it as his opinion which he desired might be entered of record that the Court ought not to be opened nor business go on until the Act of Parliament imposing Stamp Duties in His Majesty's American Dominions could be complied with and at the same time protesting as far as was in his Power against permitting Business to go on in the said Court upon unstamped Paper and against all such Officers, Ministers Counsellors Attorneys & Suitors as should be concerned in the same; also forbidding all persons at their Peril to Teste any Writ or Process in his name. That your Petitioner being then called upon & enjoyn'd as Clerk to enter the Order for Judgement upon Paper that had no Stamp expressed his Sorrow at being reduced to the disagreeable necessity of declining to pay any implicit obedience to the Order & directions of the Court humbly offered his reasons for withholding his obedience in the best manner he was capable of doing it & concluded with saying that as the Act in Question which during the whole course

course of the Debate had been allowed to be of Force in this Province had in cleat Positive and explicit Terms forbid under a heavy Penalty his doing what he had just received orders to do unless Stamped Papers could be procured for that purpose as he knew of no higher authority under the British Constitution than that of an Act of Parliament he altho' a Ministerial Officer durst not even under the sanction of the Court take upon himself to proceed in direct opposition to the united Act of King Lords & Commons especially as he was but too well convinced that the present impracticability or impossibility as it was termed of carrying the Act into Execution which had been so strongly urged and insisted upon did not proceed either from the Act of God or any other unavoidable accident That being sworn to the faithfull discharge of his duty as well towards his Sovereign as his Subject his conscience would not permit him to execute the order which had just been given him That he therefore most humbly begged leave to decline complying therewith & should as chearfully as he was able submitt himself to the Pleasure of the Court.

That upon your Petitioners non compliance as
aforesaid

aforesaid W^m Mason Esq^r being asked whether or not he would undertake to do what your Petitioner had Declined and assented thereto was ordered to enter the Order for Judgement in the usual manner which he did accordingly That the said W^m Mason was then further ordered by their Honors the Assistant Judges to Act as Clerk of the Court untill they would have an opportunity of making known to your Honor your Petitioners conduct & behaviour.

That your Petitioner having since been informed that their Honors the Assistant Judges either have presented or intend to present to your Honor a Petition or request in writing desiring to have your Petitioner suspended for disobedience and neglect of Duty and another Clerk appointed in his room humbly hopes that before any determination be thereupon had, he may be permitted to be heard in his own Justification either by himself or by Council and your Petitioner as in duty bound will ever Pray so forth.

Chas^s Town
4th April 1766 }

D C.

Inclosure N^o 3

South

South Carolina.

In the Common Pleas

1st day of April 1766 (being the Return day)

Present

The Chief Justice

Mr Justice Pringle Mr Justice Lowndes

Mr Justice Smith Mr Justice Doyley

James Jordan } Mr Bee Attorney for the Plaintiff

Joseph Law } having moved the Court for judgment

upon the motion formerly made by him in this cause,

the consideration of which had been Postponed to this

day. Their Honors the Assistant Judges, by Mr Justice

Lowndes unanimously declared it as their Opinion, for

which they gave their reasons at Large, that Judg-

ment be Ordered for the Plaintiff agreeable to the

Motion in the usual manner as has heretofore been,

no Stamp Paper being to be had; And in answer to

the Petition Presented and read at the last Ad-

journal^t day, Declared it as their further Opinion that

the Process of this Court be issued out in the usual

manner to any person who shall require and apply

for the same. That there may no longer be a Com-

plaint that Justice is either denied or delayed: When

his Honor the Chief Justice at Large delivered it as

his

his Opinion (which he desired might be entered of record)
 That the Court ought not to be opened nor business
 to go on untill the Act of Parliament imposing
 Stamp Duties in his Majesty's American Dominions
 could be complied with. Dougal Campbell Esquire Clerk
 of this Court being then called upon to do his duty
 and enter the Order for Judgment, Humbly beg'd Leave
 to decline Paying obedience to the directions of this
 Court, at the same time offering some reasons for
 his non Compliance, which being disallowed of:
 William Mason Esquire was by the Court appointed
 to Act as Clerk thereof (untill the Assistant Jud-
 ges have an opportunity to represent the Conduct of
 the said Dougal Campbell, to His Honor the Lieut-
 enant Governor.) and directed to enter the Order
 for Judgment which was done accordingly; The said Dou-
 gal Campbell from particular Tenderness and In-
 dulgence on Account of his hitherto dutifull and
 diligent Behaviour in Office not being proceeded a-
 gainst with that Strictness which his Disobedience
 upon the present occasion merited a Piece of In-
 dulgence which this Court will by no means here-
 after suffer to be drawn into a Precedent.

A True Copy taken from the Court Book. W^m Mason
 The

(Inclosure)

The Chief Justices Reasons delivered also at the Council Board when the Application of the Assistant Judges to suspend Mr Campbell was under Consideration.

It is no Part of my business to examine into the Merits of the late Statute, which has caused so great commotions in these Parts, or to moot a Question which has probably undergone the determination of the British Parliament, I shall therefore confine my observations, to the Application lately made to this Court by Mr Bee in the case of Jordan agt Law which I intend to be my answer also to the Merch^{ts} Petition.

The apparent Tendency of the Motion is that Business may be carried on as usual in this Court. and the arguments in Support thereof are briefly these.

That it is against Magna Charta to delay or deny Justice to the Subject— again— That the Law requires nothing impossible, & that by the Stamp Distributors refusal to act, no Person can Procure Stamp Papers.

In order to Support this last Fact, the Lieut Governor's certificate under his hand and Seal
at

at Arms, is produced as Evidence not to be disputed.

The Gent^l have called to their Assistance, a few Commonplace Maxims, which they have wrested to their Purpose, they strained hard for it, & in my Opinion Partially applied em.

It is Notorious that the Stamp Officers as well as the Stamp Papers, are arrived in this Province. The Evidence of my Senses has long convinced me of the certainty of the former Fact, & the Governor's official Declaration by advice of Council that the Papers were lodged in Fort Johnson, leave me no room to doubt the latter.

But (say they) the Officers refuse to Act, and hence arises the impossibility which is urged as a Substantial reason why the Circulation of the Papers has never taken place.

This may be the truth, but it is not the whole truth. I am (unfortunately) too well warranted in saying, that other causes have concurred to prevent the Circulation & use of them.

If we refer ourselves for Arguments to Maxims of Law we shall find them uniform, consistent & compact, They are like an embattled host, each moving to one Point good under the same Principal and
for

for the same extensive ends instead of opposing they add to each others Strength and become firm by an indissoluble Union.

The Sole Question in this case is (as the Att^y General insisted) whether the impossibility so much urged be a legal one, or in other words such as can be properly ranked under any of the Maxims cited for the Purpose. The Law declares that no man shall avail himself of his own wrong. The like law pronounces that no man shall carve out his own remedy, and it is a principal of Equal Notoriety that the Laws of England cannot be changed but by Authority of Parliament, from these grounds I reasonably infer, that an impossibility must not be created by wrong, That if the Subject be aggrieved by Law, he must be redressed by Law, & that obedience is due to every Statute from those to whom it extends until the same Authority which made the Act shall graciously see fit to alter or annul it.

If the rules and Maxims of the Common Law are allowed to Determine in any case they must be construed, that they shall not interfere with, or oppose each other, for it is absurd to assert, "that a man shall not carve out his own remedy, & yet shall be

be allowed under a different Rule, to prevent for his own Private convenience the due operation of a Law.

It is a Principle in the Common Law, that Statutes shall not bind the Plantations unless Specially extended to them. But can there remain a doubt what Part a Judge ought to Act where the Law is Plain and obvious. Has he a Discretionary Power to receive one Statute as the rule of his Conduct in Judgt & reject another? do the Books of Juris Prudence Authorise a Judge to explain or to give Law, And is our Constitution unsettled at this day in so important and Interesting a concern.

I am obliged by the Tenor of my Oath to take Judicial Notice of all Publick Acts, and it is a well known rule in Evidence, that Juries as well as Judges must take Notice of a General Act of Parliamt without being Pleadet & Lord Ch. Bacon Gilbert is express in this Particular, for (says his Lordsh) Judges are obliged by their Oaths to Judge all matters coming before them, Secundum Leges et Consuetudines Anglie (according to the Laws & Customs of England), and therefore they cannot be obliged Ex Officio to take notice of a particular Law, because it is not Lex Anglie a Law relating to the whole Kingdom.

But

But granting for Arguments sake, that the Impossibility of obtaining Stamps did not arise from our own Act.

The Evidence which this Court is possessed of as a ground work for our proceeding in direct opposition to the Law, is in Fact, as much a Nullity as any act in this Court would be without Stamp Paper.

I cannot better explain the duty we impliedly owe to the Laws of Great Britain, than by Adopting the words of Lord Chancellor Hardwicke as taken from Atkine's Reports P. 644. Plantations were originally members of England, & Governed by the Laws of England, and Persons went out originally Subject to the Laws of England, unless in some regulations and Customs which they have a power of making.

Permit me to observe, tho' not urged in the debate. That to assert that either House of Parliament has a Legislative Power without the King, Subjects the Speaker to the Guilt of a Premurise & it may not be an improper caution to reflect what censure those Persons may incur who either actually or virtually deny the Legislative Power of King, Lords & Commons of Great Britain over the colonies in America.

I am an utter Enemy to Innovations, and if there be a doubt it is most advisable to err on the safe side, As it is more prudent to bear a Temporary Evil than to Transgress in any Instance against a fundamental rule of Law.

I cannot give my Consent or Countenance to open this Court in Defiance of Law. I revere our happy Constitution, It is a fair and noble Structure, raised at the Expence of our Ancestors Blood & Treasure, & I will not deface the Stately Fabric in which Stands the Temple of True Liberty, where many Saints, Confessors & a whole army of Martyrs have for Centuries Past been offering up a glorious incense.

I am Sorry to differ with my Brethern the Judges, but they will excuse me because I do it upon Principle

Upon the whole, I do protest (as far as my power extends) ag^t permitting business to go on in this Court upon Common Paper & against all Officers Ministers, Counsellors, Attorneys, and Suitors who shall be concerned in the same, and I do strictly forbid all Persons at their Peril, to Tete any Writ or Writs Process or Processes in my name

Delivered in Open Court, the first day of April 1766

Cha^s Skinner

April

(Inclosure N^o 4)

April 8th 1766

Gentlemen

Your Application to me to suspend Douglas Campbell Esq Clerk of the Court of Common Pleas for not obeying your order in Court to enter Judgment on the first instant, brings me into a very disagreeable Dilemma; either on the one hand I shall incur the Royal Displeasure if I should according to your desire suspend Mr Campbell, in case there should not appear to his Majesty a sufficient cause of Suspension as I am forbid by the Kings Instructions to suspend without sufficient cause to be immediately transmitted and laid before his Majesty, or on the other hand if I should not suspend him, I might appear not to pay that attention to support your Authority and the Obedience due to your Orders as Judges of the Court, which every motive of esteem for your private Characters and respect to your Publick Station would prompt me to shew.

In this difficult and delicate situation it was not prudent in me to rely upon my own Judgment to form my determination thereupon; I therefore referred your Application to me to the consideration
of

of his Majesty's Council desiring their Opinion whether in this case there is sufficient cause for a suspension according to his Majesty's Instruction.

Before the Council entered upon the matter the Chief Justice delivered his reasons for his dissenting from your Order in Court mentioned in your Representation which he said were delivered in Court and then withdrew from the Board, and Mr Campbell by Petition stated his particular circumstances and prayed to be heard before determination, which being according to Equity was granted, the purport of which declared his refusal to enter your order to have proceeded solely from his fear of incurring the penalties of the Act which particularly names his office and he therefore considered himself and not the Judges as answerable for his Acts therein, and he has made to me the strongest and most dutiful professions of Respect for your Authority and Commands to which no one can be more ready to pay all due Obedience and that nothing was more remote from his thoughts than the least appearance of a contumacious disregard of your orders, which from his past good behaviour I am willing to believe.

His Majesty's Council having maturely weighed the
the

the matters contained in your Representation and the reasons of the Chief Justices dissent and those given by Mr Campbell the Clerk relative thereto, are of opinion that a disobedience to the Orders of the Court in a general sense is most certainly a very sufficient cause of Suspension, but that the present case of Mr Campbell is attended with such circumstances as do not subject him to the charge of Disobedience in the general sense, and therefore, that in the present case there is not sufficient cause to suspend Mr Campbell from his Office, especially as my Compliance which you desire under such circumstances must subject me not only to the Kings displeasure in general, but to the more severe penalties of an Act of Parliament of Great Britain as yet of force in this Province, which I might thereby be considered to act repugnant to.

I am very sorry therefore Gentlemen to acquaint you that I cannot comply with your request in this case, tho' I am with great truth and regard.

The Hon^{ble}

Gent^l your most Obedient

Robert Pringle

humble Servant

Lawrence Lowndes

W^m Bull

Benjamin Smith & Daniel Dayley Esq^r

Assistant Judges of South Carolina

Read July 12. 1766.

Enclosures Nos 5 to 10 have not been copied, as they will be entered in the Journals of Assembly.

B P R O A & H I Vol 223 p 125

Charles Town May 8th 1766

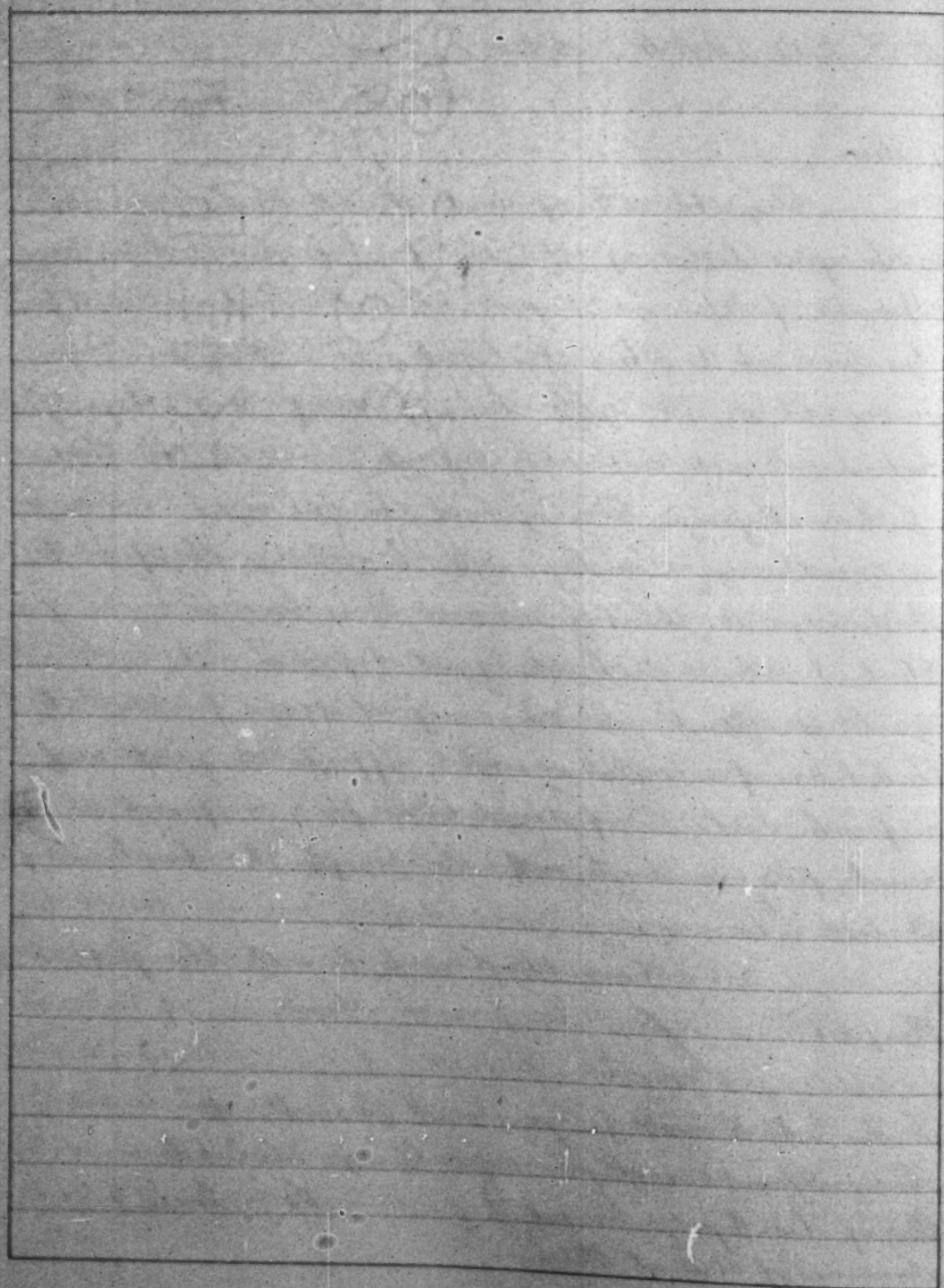
Sir

On the 15th of last Month I was honored with your letter of the 16th of November inclosing a Minute of the Treasury board, and signifying His Majesty's Commands that I should omit nothing in my power to concur with the Officers of His Majesty's Revenue to establish the Regulations which the Lords of His Majesty's Treasury have thought expedient to make, so essentially advantageous to the Trade both of Great Britain and the Colonies, and I beg leave to assure you that I shall with the greatest pleasure as well as Zeal be attentive to everything that can facilitate the Execution of a measure which affords so great and a fresh Instance of their Lordships care of, and which must produce such extensive benefits to the Trade of British America.

I have the honor to be with the greatest Respect

Sir

To The Right Honourable Your most Obedient and
Henry Seymour Conway Esq. most humble Servant
One of His Majesty's Principal
Secretaries of State at St James's
Wm Bull



B P R O A 4 N I Vol 223 p 139

59
Charles Town May 9th 1766

Sir

By the Hillsborough Packet on the 15th of last month I received the honor of your Letter (a duplicate, the Original never having reached me) dated the 24th of October 1765 signifying his Majesty's Pleasure in regard to the suppression of riots in this Province and it is with no small satisfaction I reflect that my behaviour in that delicate conjuncture has been regulated in the same manner which his Majesty has graciously thought fit to command his Governors to observe.

I am to acquaint you, Sir, that within these two days we have received Accounts from various Parts that the Stamp Act is certainly repealed, which are attended with circumstances that leave no room to doubt the truth thereof. The joy of the people on this occasion was demonstrated by running almost to Excess at the thoughts of being relieved not only from the distress which the present Stagnation of business had brought on them, but also from the apprehensions of having future Burthens laid upon them and altho I expect the arrival of Lord Charles Montague our Governor every day the irksomeness of the late

late Restraint renders the people so impatient of waiting for any further Confirmation of this agreeable News, that as the Repeal operates from the day the King gives his Royal Assent to the Bill, all the usual Channels of Business are now opened and with them a prospect of good Order Tranquility and Prosperity thro' the Provinces.

Upon this joyfull occasion may I presume as an American to lay my most unfeigned Thanks at his Majesty's Feet, for the Royal and benevolent attention his Majesty has been pleased to shew at this important and delicate Conjunction to the peace and satisfaction of his American Subjects, whereby mutual Confidence is restored between the Mother Country and its Colonies, And permit me Sir, at the same time to present my most grateful Acknowledgements to you for the generous Part you have taken throughout this matter and for the acceptable services which your powerful Influence and example have rendered America in effecting this happy Event.

I have the honor to be with the greatest respect
To the right honourable Sir

Henry Seymour Conway Esq your most obedient
One of His Majesty's principal and most humble Servant
Secretaries of State at St James's

Wm Bull

B P R O South Carolina B T Vol 21 A 32

Charlestown May 20 1766

My Lords.

I am to acquaint your Lordships that at the first time the Court of Common Pleas of this Province sat after my having refused, at the request of the Assistant Judges & of the Assembly, to suspend Dougal Campbell Esq Clerk of the said Court for his Disobedience to the Orders of the Assistant Judges in Court, which matters I had the honor fully & distinctly to represent to your Lordships, in my letter of the 5th instant, The Court fined Mr Campbell one hundred pounds proclamation money for his said offence, and upon Mr Campbell's application to me for such Relief on account of the said fine as to me should seem meet, for the same reasons which induced me not to suspend Mr Campbell from his Office, I am now induced to suspend the Payment of the Fine until his Majesty's Pleasure shall be signified; and in Obedience to his Majesty's sixtieth Instruction to Governor Boone, I transmit to your Lordships an account of my Proceedings thereupon, with a copy of Mr Campbell's Petition to me & of the order of the Court imposing the said Fine, all which are humbly submitted to

to his Majesty's Royal Consideration & Pleasure.

I have the honor to be with the greatest Respect

My Lords

Your Lordships

Most Obedient &

To the right honourable most humble Servt
the Lords Commissioners W^m Bull
for Trade & Plantations
at Whitehall

Rd June 30 1766

Read July 10 1766

B. P. R. O. South Carolina B. T. Vol 21 A 33

(Inclosure to Lieut Gov Bull's Letter of 20th May 1766)

South Carolina

To the Honourable William Bull
Esq^r Lieutenant Governor and Commander
in Chief in and over his Majesty's
Province aforesaid.

The Petition of Dougal Campbell Clerk of his
Majesty's Court of Common Pleas in the
said Province

Humbly Sheweth

That your Petitioner having at a Court
of Common Pleas begun and holden at Charlestown
on Tuesday the thirteenth instant been fined in the
sum of One hundred pounds Proclamation money of
America, which fine he is ordered to pay in ten
days from the said thirteenth for his having on
the first day of April last, refused to enter up a
Judgment in the case of Jordan against Saw, as he
had been Ordered to do by the Court, and for his
afterwards refusing to issue the Writ of Habeas as
he had been required to do by their Honors the As-
sistant Judges, as by a Copy of the Entry and Order
of the Court made upon that occasion, and herunto
annexed

annexed may more fully and at Large appear.

That your Petitioner having already accounted to your Honor for his abovementioned Conduct, in which your Honor held him to be justifiable from the submission which he owed to a Superior Authority namely that of an Act of the British Parliament, Humbly prays that your Honor will be pleased to grant him such relief touching the said Fine as to your Honor shall seem meet. And your Petitioner as in duty bound will ever pray.

Charlestown }
16th May 1766 }

Dougal Campbell C. C. P.^o

Copy of an Entry made in the Minute Book of the Court of Common Pleas May 13th 1766 referred to, in the above Petition.

In the Common Pleas

May Term 1766

Present

The Chief Justice

M^r Justice Fringle M^r Justice Lowndes

M^r Justice Smith M^r Justice Doyley

The Court have taken into consideration the very extraordinary and unprecedented behaviour of the Clerk on the

the first day of April last in repeatedly refusing and obstinately persisting in his refusal to obey the reiterated order of the Court, to enter up Judgment in the Cause Jordan against Law, which the Court had after hearing Arguments, upon mature deliberation adjudged should be done. — The unexampled and daring violation of the known duty of the Clerk, in open Contempt and defiance of the Authority of the Court, is considered as much aggravated by the presumptive pretences which the Clerk set up in justification of his disobedience viz: That the Stamp Act did not allow him to pay obedience to the directions of the Court thereby endeavouring to wrest from the Court (to whom of right it appertains to construe the Laws) their proper Jurisdiction, and to Assume and arrogate to himself a power to supersede and controul their determinations, to the total Inversion of all Law, Order, decency and decorum. Not considering that should an Act of Parliament release him from the obligation of obeying the orders of the Court, or give him discretionary Powers to do so, or not, as their Judgment coincided with his own, that he would instantly cease to be Clerk, it being inconsistent with, and repugnant to the very Idea of that Subordination which as a Ministerial Officer he

owes

owes to the Court, to be exempt from due obedience to their Authority. The Court have further considered the Clerk's gross neglect of duty in not issuing the venire for summoning a Jury for the present Court as was his bounden duty both by the nature of his Office and the obligation of his Oath, and to which he was particularly enjoined by all the Assistant Judges; By reason whereof the whole business of the Court requiring a Jury, must be delayed and postponed until next August, a time so inconvenient on Account of the excessive heat, that little or no business is wont to be done to the great prejudice and hurt of His Majesty's Subjects, the prevention of Justice, and in all probability the total loss of many just demands. In order therefore to support the Honour and Authority of the Court, to enforce due obedience and regard to their orders and determinations and to prevent the fatal consequences that will unavoidably result from a want of due Subordination and subsereny in the Officers of the Court, and their neglect of duty. It is Ordered that Dougal Campbell Esq. the Clerk of this Court for his said Contempt, Contumacy and Neglect of duty, do pay a Fine to his Majesty of the sum of one hundred

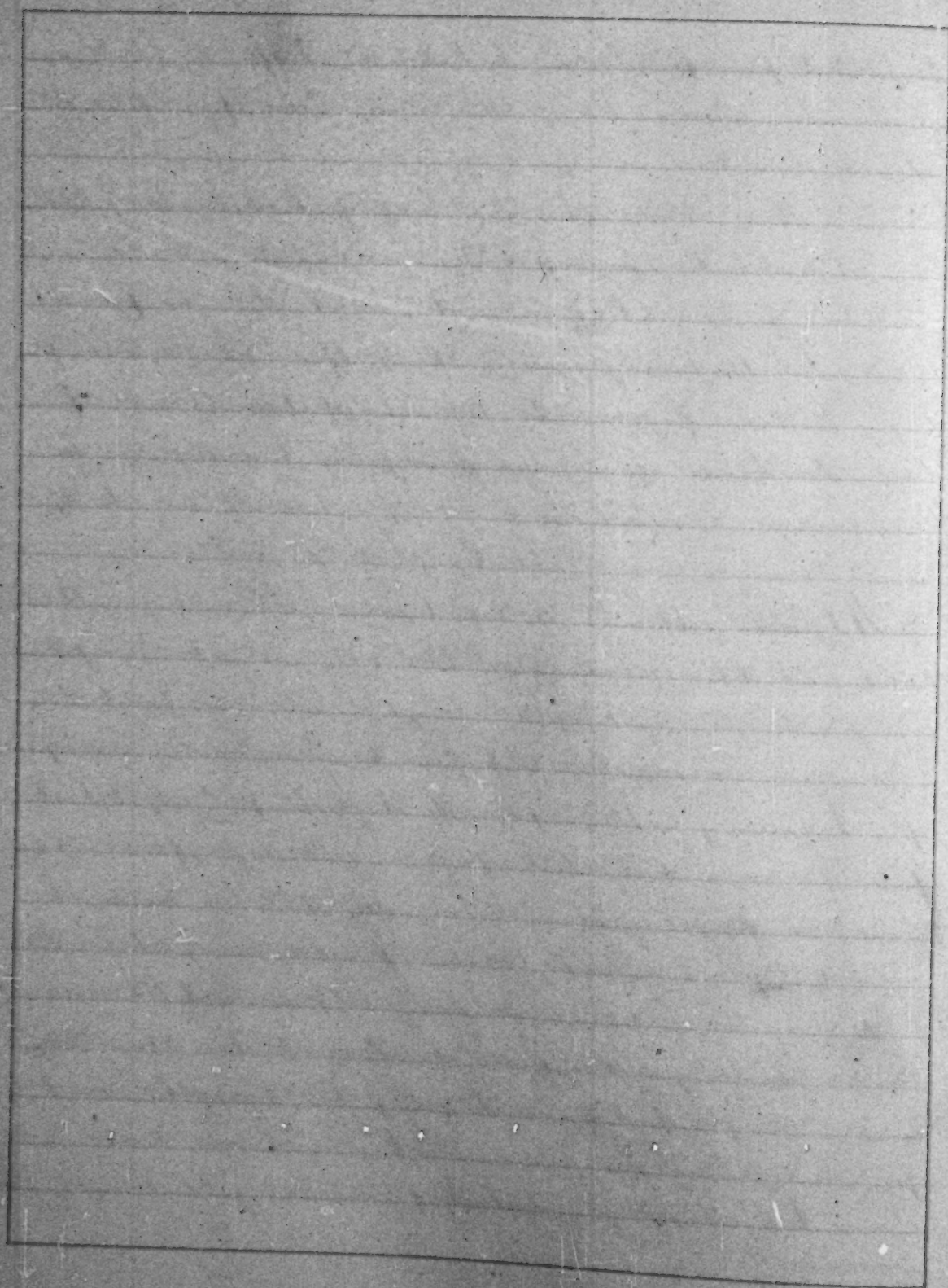
hundred pounds Proclamation money of America; and
that the same be paid within ten days from this
day.

His Honour the Chief Justice having spoke
in the Clerks Justification and declared his dissent
to the Judgment of the Court quitted the Bench.

I do hereby certify that the above is a true
Copy taken from the Records of the Court of
Common Pleas of an entry therein made and exam-
ined by

D. Campbell C. C. P.

Read July 10 1766.



B. P. R. O. South Carolina B. T. Vol 21 A. 34.

(Inclosure to Lieut Gov Bull's Letter of 20th May 1766)

South Carolina

By the Honourable William Bull Esq^r
Lieutenant Governor and Commander in
Chief in and over the Province aforesaid

To all and singular the Judges and Justices of
our Sovereign Lord the King within the said
Province, To George Saxby Esq^r his Majesty's Re-
ceiver General, and to all other whom these
Presents may come.

Whereas at a Court of Common Pleas begun &
holden at Charlestown the thirteenth instant Dougal
Campbell Esq^r Clerk of the said Court was fined in
the sum of one hundred pounds Proclamation money
of America for Contempt and Neglect of Duty, which
fine he was Ordered to pay in ten days from the
said thirteenth instant, as by an Entry made in the
records of the said Court, reference being thereunto
had may more fully and Large appear. And Whereas
the said Dougal Campbell hath made humble suit
to me, to grant him such relief touching the said
fine as to me may seem meet.

Now Know ye that I for divers good causes
and

and Considerations me therunto moving have thought
fit to Suspend the payment of the said Fine until
His Majestys Royal Will and Pleasure shall be there-
upon made known.

(L.S.)
W^m Bull

Given under my Hand and Seal
at Arms at Charlestown this
Seventeenth day of May in the Year
of our Lord one thousand seven
hundred and Sixty six and in the
Sixth year of His Majestys Reign.

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B. P. R. O. South Carolina B I Vol 21 A 35.

Charlestown June 9. 1766.

My Lords

I had the honor to acquaint your Lordships sometime ago that I had ordered a Boundary Line to be run between the Cherokee Indians and the Settlers of this Province; I have now the satisfaction to acquaint your Lordships that the line is actually run & marked, & for ascertaining the Geography of this Country thereabouts I had it measured. It extends 27 Miles South & 15 North of the Cherokee Road. I thought it proper on this occasion to issue a Proclamation notifying the same to all Persons concerned. As the Boundary between this Province and North Carolina is not settled in those Parts, I would not presume to carry the Line further than Reedy River, nearly the 35° degree of latitude, lest it should be his Majesty's Pleasure that the line of Partition run in the year 1764 should be continued from the Catawba Lands in that Parallel. And your Lordships will please to permit me to observe that if the continuation of the Line of Partition shall be according to that Degree of latitude, & the North West Boundary of this Province will be contracted to the

the small Extent of about forty five miles.

The Act of Assembly for prohibiting the Exportation of Corn passed last Spring not being adequate to the want of Provisions now discovered, from the impossibility of procuring supplies from the Neighbouring Provinces, & as about eighty thousand Barrels of Rice are already Shipped off, It is thought necessary to prohibit the further Exportation of Rice till the coming in of the new Crop of Corn.

N. 36
As the abovementioned Proclamations & Ordinance are printed in our Gazettes I take the liberty of inclosing one to your Lordships, until Lord Charles Montagu our Governor, whose arrival is hourly expected, shall transmit the Ordinance under the Broad Seal, with the Journals of Council & Assembly which I have ordered to be ready to go by the next Packet.

I have the honor to be with the greatest Respect.

My Lords

Your Lordships

To the right honourable most obedient & most
the Lords Commissioners humble Servant
for Trade & Plantations, at Whitehall. Wm Bull

Recd July 25 } 1766
Read — 29 }

B P R. O. South Carolina B. I. Vol 21 N 37

Charleston June 29th 1766

My Lords.

I landed here the twelfth of this Month. Soon after my arrival, agreeable to one of His Majesty's Instructions, I sent a message to the Assembly requesting the payment of the Arrears of Mr. Borne's Salary, the Message was refer'd to a Committee, and the Report of it, I send under Cover for your Lordships inspections

Since I have been here, I have received an account of the finishing the Boundary Line between South Carolina, and the Cherokee Indians; and I send you an exact plan of it.

I have the pleasure of informing you that all riots and Tumults are at present subsided here, and every one seems desirous of shewing his Gratitude to his Majesty, and the Parliament of England, for the Repeal of the Stamp Act.

I beg leave to submit it to your consideration, whether it would not be more expedient for his Majesty's Service that any Pacquets or instructions for the Governor of this Province, be sent in Merchant Ships, than by the Pacquet Boats, as they are

are sometimes many months before they come here
I am

My Lords

Your Lordship's

The Lords Commissioners
for Trade & Plantations

Obedient humble Servant

C. Montagu

Rec^d August

Rec^d — 27th } 1766

B. P. R. O. South Carolina B. T. Vol 21 A 38.

(Inclosure to Gen^l Montagu's Letter of 29 June 1766)

That the Committee upon Mature deliberation, are of Opinion, that the Assembly acted justly and wisely in withholding the annual Allowance of Mr. Boone; who had Arbitrarily and illegally Attacked a most essential Right of the Representatives of the People of this Province, that of determining the Validity of Elections of their own Members, A Constitutional Right uninterruptedly enjoyed throughout all His Majesty's Dominions, and who had also heaped repeated Insults and Contumelies on that House, when humbly applying to him for redress of Grievances, this Misbehaviour of Mr. Boone's was so notorious that the Conduct of the House upon that occasion must always remain unimpeached

But as our truly Patriot Sovereign, whose paternal Love to, and care of all his Subjects demand our highest Gratitude, has been graciously pleased to discountenance Oppression, by removing that Arbitrary and Imperious Governor for daring to trample on the People's Liberties and to appoint a Successor for whom we have reason to expect everything which our Loyalty to, and Zeal for His Majesty's Service deserve, the
Committee

Committee recommend that merely to shew the grateful Sense this House has of the many favors His Majesty has conferred on this Province and in Compliance with his Royal Recommendation, Mr Boones Salary be paid him up to the time he left this Province.

By this the House will clearly Manifest to His Majesty and to all the World that the Assembly did by no means intend to oppose his sacred Authority, impede his Government or over awe his Governor, but only to preserve the Rights & Liberties of the People, and of their Representatives, by the steps they took on that occasion.

And with respect to the later part of His Excellency's Message relative to provide a Salary for the Governor, the Committee recommend that His Excellency be informed that the House will doubtless insert a proper Sum for that Service, and for contingencies in the Estimate which is Annually brought in.

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D. P. R. O. South Carolina B. T. Vol 21. A 54.

(30th June 1766)

To the Right Honorable the Lords Commiss-
ioners for Trade and Plantations

My Lords

In pursuance of your Lordships Commands
Signified to me by M^r. Townalls Letter wherein you are
Pleased to desire my Opinion in Point of Law upon the
following Acts Passed in South Carolina in October 1764
and in January, February, April and August 1765 I have
Perused and Considered the same (vizt)

1. An Act for Raising and Granting to his Majesty
the Sum of £220,304. 7. 3 and applying 34624. 13. 4 being
the Ballance of several Funds in the Publick Treasury
making together 254,932. 0. 10 to Defray the Charges of
Government from the first day of January 1762 to the
31 day of December 1763 both Days inclusive And for
other services therein mentioned
2. An Act to revive and continue for the Term
therein limited several Acts and Clauses of Acts of
the General Assembly of this Province
3. An Act for allowing further to the Inquirers
Assessors and collectors of the several Parishes and
Districts in this Province for carrying into Execution the
the

the General Tax Act, passed the sixth day of October in the Year of our Lord One Thousand Seven Hundred and Sixty four in the fourth year of his Majesty's Reign.

2. An Act for Raising and Granting to his Majesty the Sum of 102,924. 12. 6. and Applying 30,240. 8. 9 (being the Ballance of several Funds in the Publick Treasury) making together 133,165. 1. 0 to defray the Charges of this Government from the first day of January to the Thirtieth first day of December One Thousand Seven Hundred and Sixty four both days inclusive; and for other Services therein mentioned.

5. An Act to Impower the Persons therein named to Sell and Dispose of a Tract of Land on Wadmelaw therein mentioned, and to Purchase another Tract for the use of the Minister or Pastor of the Meeting House on John's Island.

6. An Act to promote and carry more fully into Execution, An Act to incorporate the King's Indico Society, now of Force in this Province.

7. An Act for appointing an Additional Number of Inspectors, who may Judge and Determine what Hemp is Intituled to the Premiums or Bounty given by the Laws of this Province.

8. An Act for Laying out a Publick Road from the Muster Field of Godfrey's Savanna, in the Parish of St Bartholomeus Northwardly Across Black Creek and the Great Swamp, being the Easternmost Branch of Saltcatcher River, and into the Fork, and to the German Settlements and for Appointing Commissioners for the same.

9. An Act to establish a Ferry from Ladys to St Helena Island, also from Hobcous to Charles Town, from Daniels Island to Charles Town, from South Edisto to the Land of William Drayton Esq^r, from New Windsor to Augusta, and from the Ferry of Moses Kirkland on Saluda River to the opposite Shore, and Establishing a Road, leading to the said last mentioned Ferry, and for making Parkers Ferry a Publick Ferry, and for Establishing a Ferry for Marks Bluff to the opposite Shore, and to appoint New Commissioners for removing Obstructions in Wateree River.

10. An Act for the Encouragement of John Cuthbert in his Projection of certain Implements for the better Cultivation of Rice and other Grains.

11. An Act for Establishing a Parish in Berkeley County by the Name of St Mathew, and for declaring the Road therein mentioned to be a Publick Road.

This Act which is for Establishing a New Parish.
Gives

Gives Authority to them to Elect two Members
to be sent to the General Assembly, the Propri-
ety of which must be Submitted to your Lord-
ships

Upon Perusal and Consideration of the
before mentioned Acts I have no other
Objections thereto than are before men-
tioned, & am

My Lords

Your Lordships

Most Obedient

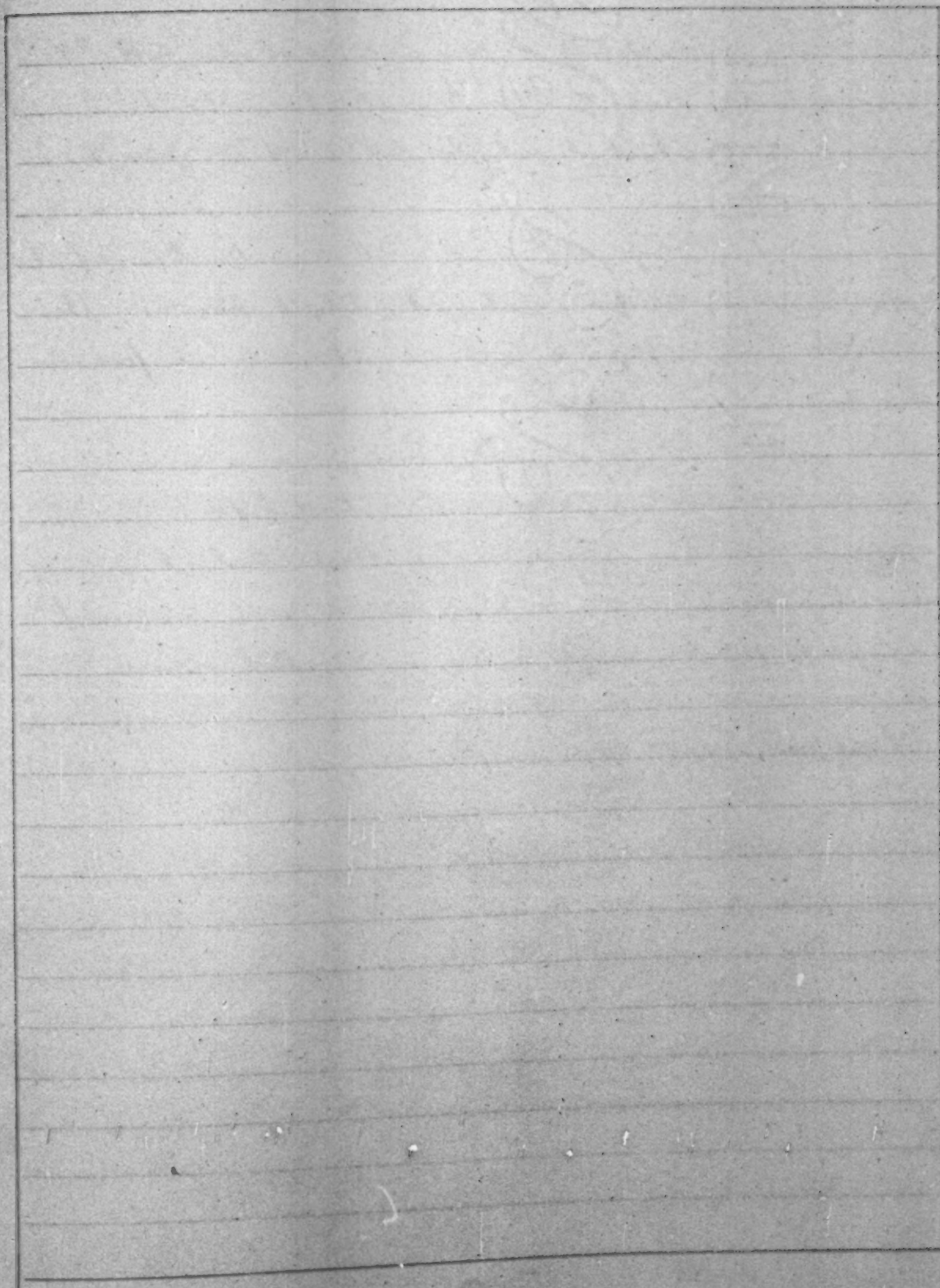
Lincoln's Inn

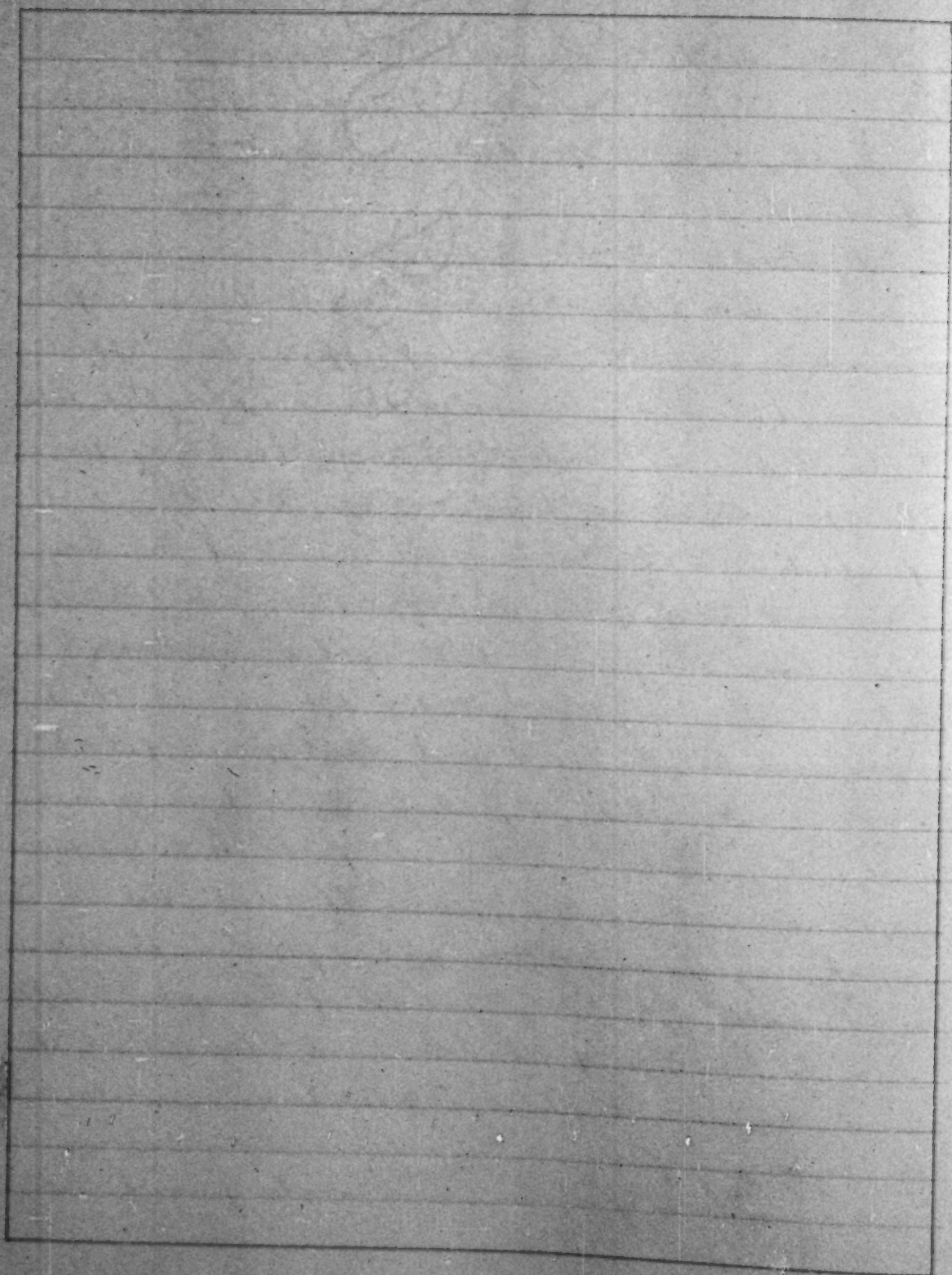
30 June 1766

Humble Servant

Mat. Lamb.

Read March 26 1767





B P R O South Carolina B I Vol 29 p 367
(4th July 1766)

Right Honble Lord Charles Greville Montagu, Gov^r
of South Carolina

My Lord

We hope this Letter will find you safe arrived in your Government, free from those Difficulties and Embarrassments, which accompanied the late distracted and disordered State of the Colony from the Opposition given to the Stamp Act, the Repeal of which, will, we trust, be the means of restoring Peace and good Order, and reestablishing that Harmony and mutual Confidence, which ought always to subsist between this Kingdom, and her Colonies, and which is so essential to the Interest and Happiness of both.

We shall be glad to receive from you, as early as possible, an Account of the State of Affairs within your Government; and to the end that Account may be as accurate and explicit as possible we herewith inclose to you Heads of Enquiry usually given to Governors of the American Colonies, to which we desire you will return a full Answer as soon as conveniently may be.

The only Circumstance in the present State
of

of South Carolina; which seems to us to require immediate Attention, is the Affairs of the Boundary Line with North Carolina, with respect to which we cannot but lament, that Line was left unfinished by the Commissioners appointed to run it in consequence of His Majesty's Instructions; and that it seems to have stopped short of that District, where the greatest Disputes have subsisted, and consequently where such a Line of Jurisdiction was most wanted, and although we see, that the two Provinces do widely differ in their Ideas and Opinions of the Direction, in which this Line ought to have been continued, yet we hope, they do not irreconcilably differ, and that some means may be found to accommodate this matter to the mutual Interest and Satisfaction of both.

It would give us great Pleasure to be Instrumental in obtaining such accommodation; and as Governor Tryon seems not to be aware of the Objections of South Carolina to continuing the Line in the same Direction, it has hitherto proceeded in, we shall transmit to him an Extract of so much of Lieut. Governor Bull's Correspondence, as relates to this Matter, and shall impatiently wait his Answer, that we may
take

take such further Measures, as shall appear to be
necessary. We are

My Lord

Your Lordships

most obedient

humble servants

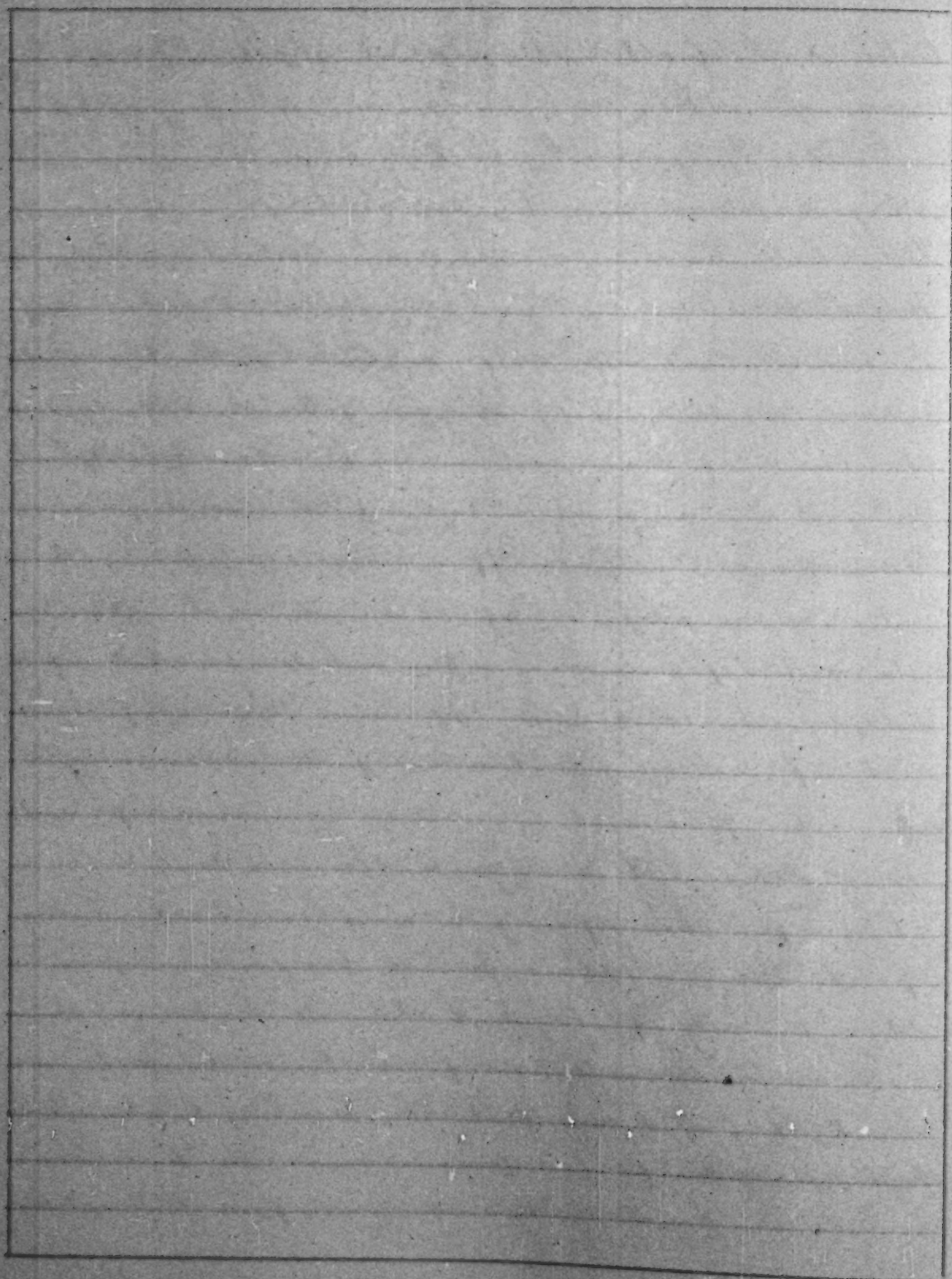
Dartmouth

John Roberts

William Fitzherbert

Palmerston

Whitehall }
July 4th 1766 }



B P R O South Carolina B T Vol 29 p 370

(11th July 1766)

To the Kings most Excellent Majesty.
May it please Your Majesty.

We have received sundry Letters and Papers from M^r Bull Esq^r Your Majesty's Lieut Governor of South Carolina informing us that Application had been made to him by the four Assistant Judges of the Court of Common Pleas, desiring him to suspend Dougall Campbell Esq^r Clerk of the Court of Common Pleas, from his said Office, upon his refusing to enter up a Judgement of the said Court upon unstamped Paper, as being repugnant to the Act of Parliament; that this Application has been followed and enforced by an Address of the Assembly to the like effect, and the same Requisition repeated by a subsequent Message to the said Lieut Governor, that upon his refusing to comply with the Terms of the above Address for M^r Campbell's Suspension, the Assembly of the said Province had come to certain Resolutions, copies of which are herewith annexed; And moreover that the Court of Common Pleas had upon the first sitting, subsequent to Lieut Governor Bull's refusal of their Application fined M^r Campbell

one

one hundred Pounds Proclamation Money for his above-mentioned Disobedience, but that the said Lieut Governor had thought fit to issue his order for suspending payment of the above fine, until Your Majesty's pleasure should be known; Whereupon We have thought it Our Duty to lose no time in laying before Your Majesty the whole of this extraordinary Proceeding by transmitting to your Majesty copies of the several Letters and Papers sent to us by Lieut Governor Bull, in order that Your Majesty may give such Directions thereupon, as Your Majesty, with the Advice of Your Council, shall judge to be expedient.

Which is most humbly submitted

Dartmouth

John Roberts

J. Dyson

Wm Fitzherbert

Whitehall

July 11 1766

B P R O Ar W I Vol 223 p 143

(7th July 1766)

Sir

By order of the Lords Comm^{rs} of his Maj^{ty} Treasury I transmit to you, for the Information of his Grace the Duke of Richmond the inclosed Copy of a Report from the Lords Commis^{rs} for Trade and Plantations on a Memorial of Governor Glen relating to his Expences incurred at a Congress with the Indians together with other Papers relative thereto; And My Lords submit to his Grace whether it may not be proper to take his Majesty's Pleasure for making requisition to the Province of South Carolina to repay Governor Glen his expences incurred in that Service.

I am

Sir

Treasury Chambers

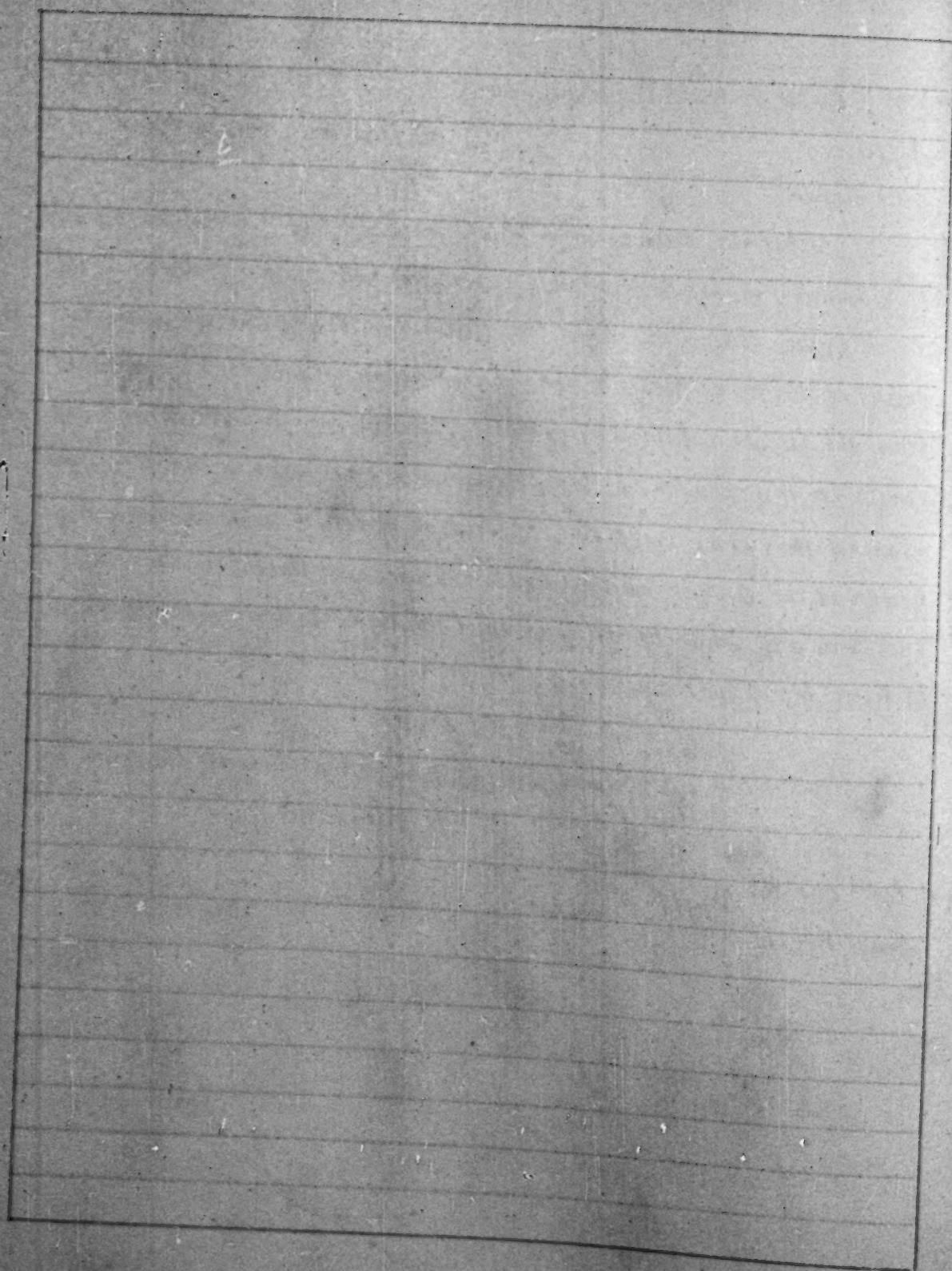
17 July 1766

Rich^d Stonehouse Esq^r

Your most humble Servant

Grey Cooper

A. B. This Report of the Board of Trade dated 27th of May 1762 has already been copied in its order of date as have also the other papers referred to in the above letter.



B. P. R. O. B. I. South Carolina. Vol 21

N 40

Charles Town 6 aug 1766

My Lords

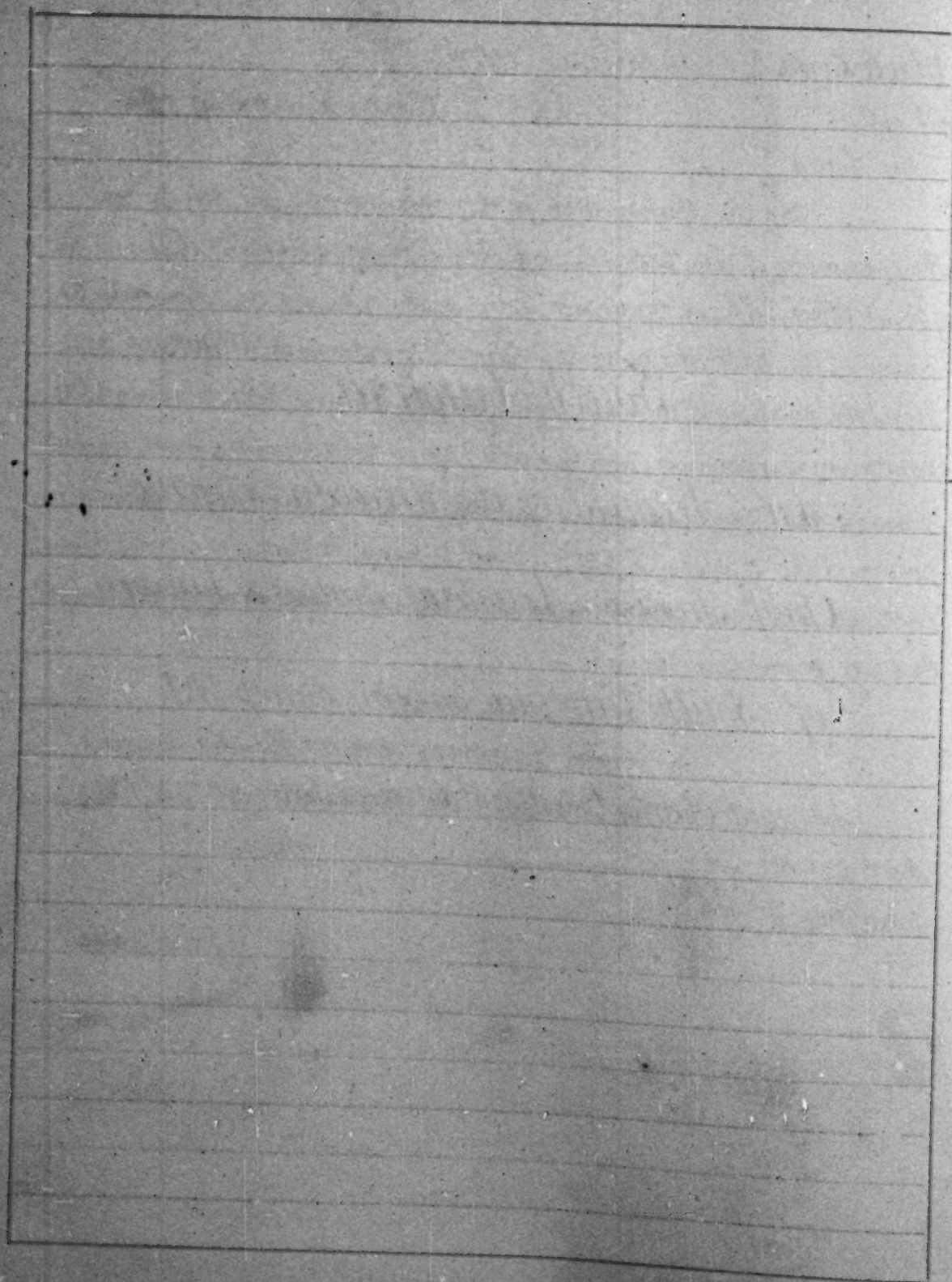
By the Buncannon packet I transmit to you the Journals of the Assembly of this Province and List of the Clearances of Ships at the Naval Office. I have the honor too of sending to you an accurate Account of the proceedings of the Lawyers and assistant Judges here from the passing of the Stamp Act. till the present time a thing My Lords in my opinion well deserving your consideration. and very necessary that some measures should be taken to curb the growing power of the Assistant Judges and to support that of the Chief Justice inclosed are some observations that the Chief Justice requested might be laid before you. I am

My Lords

Your Lordships obedient humble Servant

C. Montagu

Rec^d Oct 8th
Read Nov. 6th } 1766

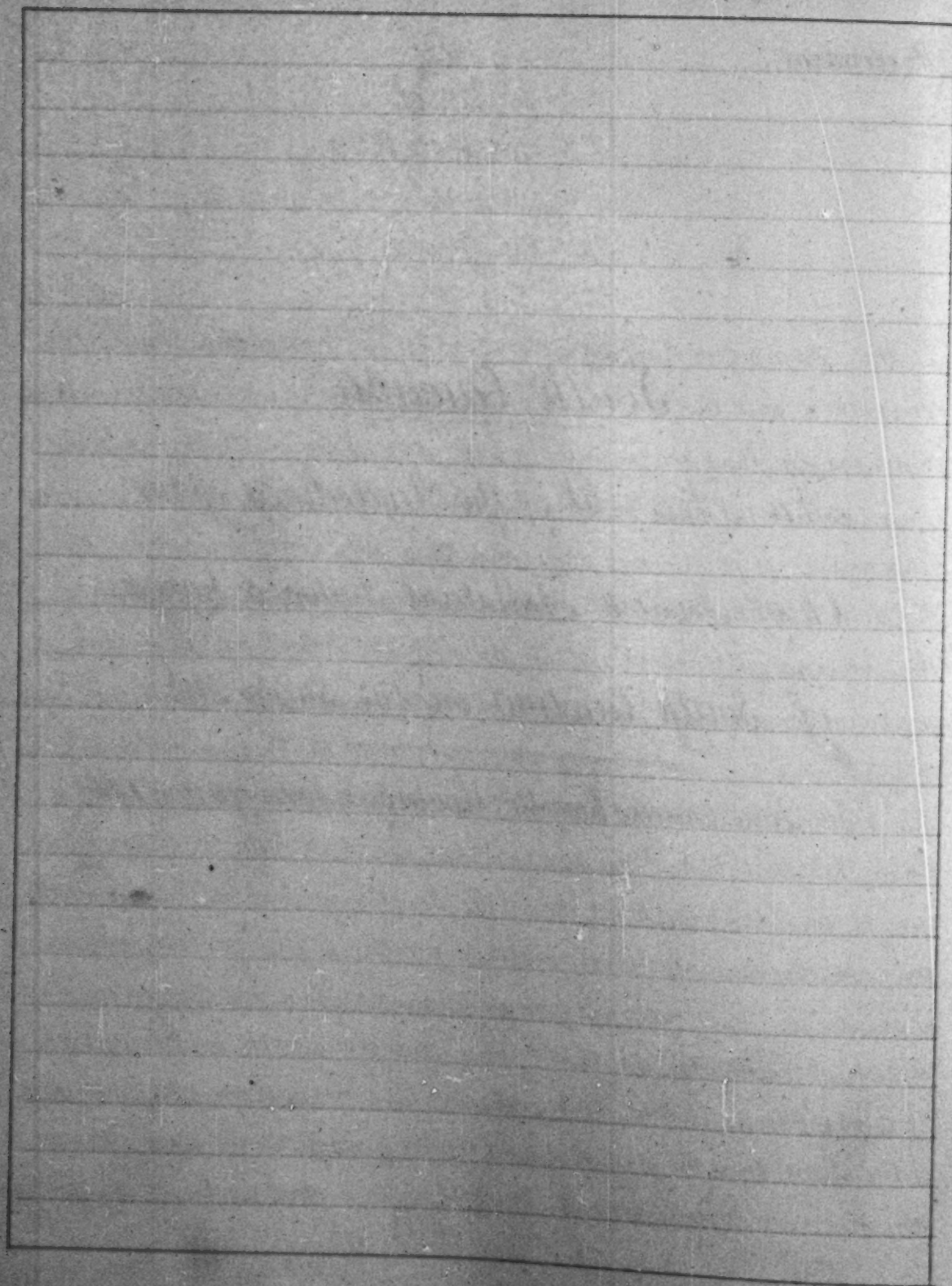


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(Inclosure)

South Carolina

*An Account of the Proceedings of the
Chief Justice. Assistant Judges & Lawyers
of South Carolina on the Stamp Act.*

[In Lord Charles Greville-Montagu's Letter of 6 Aug. '76]



S^o Carolina

In Court
12 November 1765
Present
The Chief Justice

The Stamp Act having taken place on the first of this month the Court then told the Gentlemen of the Law that it was apprehended no Business in that court could be proceeded upon, until Stamp paper was distributed but however in order to see whether there was any reasonable means or remedy to cure this The Court desired all the Gentlemen of the Law then present would attend the Chief Justice, in the evening at 6 o'clock at the House of M^r Robert Dillon, to read the said Act particularly such parts thereof as related to the Courts of Law to see how far it was binding upon them. And the Chief Justice observed that he had not seen the Act and requested M^r Charles Funkhney to bring his with him. His Honor ordered the Clerk of the Court to give Notice of this Meeting to all others, the Practitioners of the Law, and the Provost Marshall, that were not then present to require their attendance and advice. That they met accordingly and upon full Argument and Debate of the Matter, as the Act was read paragraph by paragraph, it was at last allowed and admitted by every of them the Gentlemen of the Law, that the said Act was binding upon them, and was so strictly and clearly penned, that they saw that no business could
(be)

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be carried on in the Kings Courts without Stamp paper. that the act was a self executing Law and therefore advised His Honor the Chief Justice to keep strictly to the letter of it. for that there was no possible loophole to break thro' or any pretence whatsoever to presume to do business upon Common paper in the usual way.

M^r Parsons (one of the most Eminent Gentlemen of the Law and a Member of the House of Assembly) then declared (in the presence of M^r Manigault Speaker of the House who attended the meeting as one of the Bar) that he saw no other way to relieve the present distress than that the Constituents of the Members of Assembly the Freeholders &c should address or instruct their Members to make a Motion in the House. to desire that an Address may be presented to His Honor the Lieut Governor setting forth the hindrance and stop of business in the Courts of Justice by reason of the Stamp act and the refusal of the Inspector and distributor of the Stamp papers doing their duty. and to pray that His Honor would please to order those Stamp Officers to do their duties. as required by the Stamp act or that he would please to appoint others in their room until such time as His Majesty's pleasure thereupon was known. And M^r Parsons said he was about to go into the Country in a day or two that then he would consult his constituents about it and advise them to that measure. which would be shewing a submission (thro' necessity) to the act until the parliament should be graciously pleased to repeal or alter the same. This proposal of M^r Parsons seemed to be approved of by the other Gentlemen who in like manner (then)

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then shewed an inclination to the measure but however thought it
advisable and proper that his Honor the Chief Justice should the next
day make an Order in Court by way of notifying the knowledge the
Court had received thro the Governor in Council that such an Act was
passed in Great Britain which was binding upon and must be taken
notice of by the Court and its Officers in all its public Acts and Proce-
dings which was accordingly done and is as follows:

South Carolina In the Common Pleas

13 November 1765

Present

The Chief Justice

Whereas His Honor the Chief Justice and the other Officers of this
Court have come to the Knowledge of an Act of Parliament passed
in the Fifth Year of His present Majesty's Reign imposing Stamp duties
and enjoining the use of Stamp papers in a great variety of Cases par-
ticularly in Law proceedings throughout all the British American
dominions which Act was to have taken place on the first of this In-
stant November And whereas the Judges in the several Courts are
by the said Act required to make such orders and to do all such
other matters and things as shall be necessary for securing of the
said duties and also all Counsellors, Clerks, Officers, Attorneys, or
other persons to whom it shall appertain or who shall be employed
or intrusted in the Colonies or plantations in entering filing recording
enrolling writing engrossing punting, or causing to be entered filed

(recorded)

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recorded enrolled, engrossed written or printed, any matter or thing charged with a stamp duty are enjoined under very heavy penalties and disabilities to pay a strict obedience and conformity to the directions of the said Act. And It herewith the officers appointed under the said Act. Inspector of the Duties and Distributors of the Stamped papers for this Province have notified to His Honor the Lieut Governor that they decline acting in their several and respective Stations, until His Majesty's pleasure touching the carrying the said Act into Execution shall be further made known, by which means no stamped papers are to be had. The Court being therefore of opinion that no business can be proceeded upon until such stamped paper can be procured. Adjourned to Tuesday the third day of December next at 10 o'clock in the forenoon.

This day being the 22nd of January 1766 between the Hours of 11 and 12 o'clock in the forenoon seven Gentlemen of the Law, to wit Mess^{rs} William Burrows, James Parsons Charles Pinckney, Robert Williams John Rutledge, Thomas Lee and Joshua Ward, came to the Office of Clerk of the Common Pleas, when M^r Parsons in the name of the rest, told the Clerk that as M^r Pinckney had informed them, that he had applied at the Office to have business done and had been refused, they were now come in a Body to demand process in the usual manner and to know whether or not it would be granted them, whereupon the Clerk made an answer that he could give them no process whatsoever, having none signed in the Office, not having had any since the first day of Novem^r last, the reason whereof they were well acquainted with as His Honor (the)

The Chief Justice had summoned them all to a meeting at the House of Robert
 Dillon the 1st day of last November Term to consider with his Honor and give
 him their opinion upon an Act passed in the last session of Parliament im-
 posing Stamp duties in His Majesty's American dominions when they were all
 of opinion that no business could be done for want of Stamp papers, when M^r
 Rutledge and M^r Williams said they had been at no such meeting, the Clerk
 recollecting himself answered that he knew M^r Rutledge was not present
 he being then out of the province attending at the Congress as one of the mem-
 bers from this Province, and he believed M^r Williams also had not at-
 tended M^r Parsons then asked the Clerk if he would in the usual manner
 affix the Seal of Office to any Executions which should be brought to him
 for that purpose, to which the Clerk answered that as he was an Officer
 totally Ministerial, he was not clear or not whether he could ex officio
 affix the Seal, which for the Despatch of business was lodged in his
 Office, to any Execution which might be brought to him without first
 having orders for so doing from his Honor the Chief Justice, but was rather
 inclined to think he could not M^r Parsons then asked the Clerk if the
 Chief Justice gave such orders, whether or not he would obey them, to
 which the Clerk answered that he apprehended it would be time enough
 to give a reply to this Question when he had received such orders, to
 which time he begged leave to waive making any answer to it. M^r
 Williams then took out a forty shilling Bill of the Current money of this
 province demanding a 'Nisi' and tendering the customary fees for the
 same, and several, or all of the Gentlemen being about to do the same,

(the)

the Clerk told them they might save themselves the trouble of taking out their money. that he acknowledged a tender of the fees and a demand of a writ from each of them, and that he must tell them that he had no Writs signed in the Office, and consequently could give them none.

The Gentlemen then acquainted the Clerk that they were going to wait on the Chief Justice, to know whether or not he would sign process in the usual manner, and asked the said Clerk to accompany them which he declining they left the Office.

The Clerk after the Gentlemen were gone, waited on George Saxby Esq^r Inspector of the Stamp Duties and informed him of what had passed, when Mr Saxby advised him without loss of time to wait upon His Honor the Lieut Governor and acquaint him likewise with the Affair and also to desire to know whether or not His Honor would be pleased to give him any directions or orders for the regulation of his conduct in the present emergency, this the Clerk immediately did, when His Honor the Lieut Governor was pleased to say, that he was sorry to find, that the Gentlemen of the Law were so very urgent to have the Courts opened as in all probability a very little time would bring over the resolutions of parliament relative to the Stamp Act, that he thought there was not the same necessity for opening the Courts, which there had been for opening the port, on account of the great number of vessels which were then in the Harbor and a perishable crop lying on hand, undisposed of that he had no orders or directions to give the Clerk for the regulation of his conduct on the present occasion but that he must

(be)

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be guided by his own discretion. That it was the province of the Judges to give such orders and directions as they should think requisite for the conducting of business in the Kings Courts, in which His Honor did not think himself at liberty to interfere, that provided the Courts were opened and business was to go on, perhaps the Ministry might expect that he would suspend any Officer that should take upon him to do anything contrary to the Stamp Act. Yet he should not be forward in doing any such thing, and again referred the Clerk to his own discretion for the regulation of his conduct, whereupon he took leave of His Honor.

Whilst the Clerk was gone to wait upon the Lieut. Governor, the above mentioned Gentlemen of the Law, sent one of their number to the Chief Justice, whom they saw at a distance in Church Street, to desire that he would be pleased to give them a Meeting at the Clerks Office, where they had something to propose to him, which His Honor assenting to, the Gentlemen of the Law returned to the Office, and the Chief Justice very soon followed them, when M^r Burrows in the name of the rest (as being the senior Practitioner in the Court) informed His Honor that they had just been with the Clerk, to obtain from him the Process of the Court in usual manner, but he having informed them that he had none in the Office since the 1st of November last and referred them to his Honor as his superior Officer, they now in consequence of the Clerks answer, attended his Honor to know whether or not he would let them have the process of the Court for which they were ready to pay in the usual manner, and give orders to the Clerk accordingly

(to)

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to which the Chief Justice replied that their application being of a very public nature, he would choose that it should be made in a public manner. that the Adjournment day being near at hand, he would take till that time to consider of it. when if their application was renewed in writing and signed by every of them that were for so doing which he observed was contrary to their general opinion to him on the 12th of November last. which he had notified to persons in power at home, he would cause it to be entered of Record and he would give it a public answer. which he would also have recorded, upon which the Gentlemen went away.

The Chief Justice waited on the Lieut. Governor to acquaint His Honor with the motion the Gentlemen of the Law made to him, for the purpose of opening the Courts and carrying on business without the use of Stamp paper. he acquainted his Honor with the answer he had given them and his reasons for desiring them to sign such petition or Memorial as they should think proper to present him on the Adjournment day that the Court having the evidence of their handwriting to such Memorial, it might justify the Court in such measures as it might think proper to take with regard to them.

The Chief Justice also acquainted His Honor the Lieut Governor that he had not yet got the Stamp act, and desired His Honor would be pleased to give him the act, or such directions or orders for the regulation of his conduct in the present emergency as were proposed. the Governor said he had not got any instructions himself upon the act, that if any was sent out, he believed they were made up in
(the)

the Dates with the Stamps, and then added that the Stamp Act must be the Guide and director of the Court and its Rule of conduct

And he also told his Honor, he had not so much as seen the Act, but in his Honors' hand in Council the day he took the oath required by that Law for him to take, and another copy that M^r Charles Funckney Attorney had on the consultation of the Lawyers and the Chief Justice upon that Law on the 12th November, that he never read the Law and prayed his honor to give him the Act for that purpose, he answered he had but that one for his own use, to which he must recur often in the day as occasion happened and therefore could not part with it and added that he had only borrowed it himself the Chief Justice then observed to His Honor, how hard it was under these circumstances for him to conduct himself, for that he might ignorantly fall into error, that he wished he knew what was right and proper in this case and that he would pursue it with steadiness and resolution, the Lieut Governor replied with a repetition of a Law maxim "that the Ignorance of Law doth not excuse" the Chief Justice showed great uneasiness and took his leave of his Honor, he afterwards met with M^r Saxeby the Inspector of the Stamp duties in the Street, and acquainted him what had passed between him and the Gentlemen of the Law and also with what had passed between him and the Lieut Governor upon that matter, he told M^r Saxeby how he was distressed by not having a copy of the Stamp Act, whereby he might judge what it was proper for him to do under the present
(unhappy)

1097
unhappy circumstance of affairs and then requested M^r Saxby to give him one of the copies if he had one out of the Stamp packages which M^r Saxby afterwards very obligingly sent to him.

The Chief Justice afterwards went to the Clerks Office and ordered him to return all the blank writs in that Office that he had signed & sealed and were not yet disposed, and also to collect all of them that were in the hands of the Attorney to be delivered up and cancelled and then forbade the Clerk to put the Seal to any writ or process of the Court without his particular Order, he sent for M^r Roger Pinckney and commanded him at his peril not to execute any writ or process whatsoever if the same was not upon Stamp paper, for that as there might be blank writs in the hands of the Attorney which they had not given up to the Clerk to be cancelled, notwithstanding his verbal order to that purpose and that he now had some suspicion that an improper use might be made of them M^r Pinckney the Provost Marshal promised his Honor and gave strong and repeated assurances that he would strictly comply with this Order, that it was it was his full and determined resolution, not to regard any process that might be brought to him upon any paper other than Stamp paper, tho' it had His honors name and Seal of the Court thereto for that he could not think such a writ was the Kings writ, if it was not upon Stamp paper that he was well aware of blank writs remaining in the Attorney hands, that might be made use of to serve particular purposes, but he would refuse to obey (such)

such and rather submit to a suspension than execute them until His Majesty's pleasure was known. he further said that being apprehensive such writs would be brought to him to execute, he had wrote home to Mr Cumberland his constituent very fully thereupon, and assured him he would not do any thing in his Office but with a strict eye to his duty under the Stamp Act. least it should be any any impeachment of the patent to Mr Cumberland.

The Chief Justice lives at some small distance out of Charles Town and the provost Marshal lives on his way home on whom he often called for news of the day or otherwise where he frequently declared (in the presence of different persons, some attorneys of the Court, as well as before the Clerk of the Court) to the Chief Justice that he was determined to adhere strictly to his Honors' Order. it is to be lamented that the provost Marshal is not consistent with these declarations and that he did not shew the obedience he ought to the Chief Justice's Order, afterwards enjoined by His Honors public protest in open Court which is the last paragraph that follows his reasons against opening the Court (Vide page 20) whereby he would have prevented a lot of trouble and anxiety to many as well as to himself hereafter, as persons whom he has arrested on these writs and who now remain in Goal thereon, cannot be bailed because of the want of Stamped-Bail pieces or Stamped Bail Bonds, so that he is threatened by these persons with suits for the Recovery of damages for false imprisonment.

(The)

The Gentlemen of the Law either thro' great caution or rather approving the Operation following as properest for the purpose of opening the Court, did not present their intended petition as the Chief Justice expected they would, but they fell upon another expedient that they thought could not fail of effecting their design, as they privately it is presumed, knew that Assistant Judges were to come on the Bench that morning

3rd March 1766

The Chief Justice Present.

His Honor the Lieutenant Governor granted three new Commissions (to wit) to Lawlins Lowndes dated 27th of Feb^r to Benjamin Smith dated the 28th and to Daniel Doyley Esq^{re} dated the 1st of March constituting and appointing them Assistant Judges and Justices of the Court of Common Pleas, who having duly qualified themselves that morning before a Magistrate by Virtue of a *Quidimus Potestatem* from His Honor the Lieutenant Governor came into Court and severally presented their said Commissions which were read and ordered to be recorded and then they took their seats accordingly, to the great astonishment of the Chief Justice, who had from his arrival in the Province until that time sat alone as it were (Mr Justice Pringle having seldom attended and when he did attend never having spoke in the Court) And who could not but imagine, that as he had not been previously informed in a proper manner of the Appointment of the New Assistants, and at such a time, they were put on him merely with a view of overruling his decisions and in open defiance of an Act of Parliament.

(opening)

opening the Courts of Law without Stamped paper. The Chief Justice is the rather inclined to think this was intended as a surprise upon him. because the Gentlemen Assistants during the sitting of the Court, took the Qualifying Oaths before a Magistrate, and did not take them in open Court, which is humbly conceived to be the most proper place for such a purpose. The Chief Justice apprehending how it was likely to go with him took the Seal of the Court from the Clerk to prevent the use of it to any writ or process that may be issued or tested in his name contrary to Law

The same sitting

Present

The Chief Justice

M^r Justice Lowndes. M^r Justice Smith. M^r Justice Boyley
James Jordan, M^r Bee Attorney for the Plaintiff moved the Court
Joseph Law v. that the rule to plead taken out in this Cause had
been served upon M^r Sutledge the defendants Attorney, and that
the time for pleading was long ago expired which being acknow-
ledged by Deft^s Attorney. M^r Bee moved for Judgement and was supported
by several Gentlemen of the Law, but the Chief Justice desiring a weeks
time to consider the Act was over ruled by the Assistant Judges and
could only get time till next evening to consider of the Motion consistent
with the Stamp Act.

14 March 1766

Present The Chief Justice

M^r Justice Lowndes M^r Justice Smith M^r Justice Boyley
(James)

James Jordan, Mr. Sec. Attorney for the Plaintiff, having yesterday in Joseph Law informed the Court that the Rule to plead taken out in this cause had been served upon Mr. Rutledge Attorney for the Defendant and that the time for pleading was long ago expired which being acknowledged by Mr. Rutledge, Mr. Sec. moved the Court for Judgement. to which Mr. Rutledge said, he had no manner of objection. Mr. Manigault Council for the Plaintiff, then spoke very fully in support of the Motion, as did also Mr. Pinckney, Mr. Parsons and Mr. Rutledge, who tho' not concerned for the plaintiff in this particular cause, said they were concerned as Council in a great variety of Causes of a similar nature. The motion was opposed by His Majesty's Attorney General on account of the want of Stamped papers, which still subsisted in this Province and the matter being fully argued on both sides, the Court having taken till this afternoon to consider of the Motion, were unanimously of opinion that under the particular circumstances which they are now in and the steps which have been taken by the different provinces in America, to obtain a Repeal of the Stamp Act, that no particular determination be given upon that point but that the same be postponed until the next return day. Mr. Parsons also presented to the Court a petition from several of the Merchants, Traders, Freeholders and other inhabitants of this province which was read and the consideration thereof postponed until the next return day. the petition is as follows. viz:
South Carolina To the Honorable Charles Skinner Esq. Chief Justice, and Robert Pringle, Rawlins Lowndes
 (Benjamin)

Benjamin Smith and Daniel Doyley Esq^{rs} Assistant Justices of the Court of Common Pleas in this Province

The humble Petition of the Subscribers, Merchants, Freeholders, Traders and other Inhabitants of the said Province

Sheweth That since the first day of November last many of your Petitioners and others have applied to several of the Attorneys of the said Court to commence Actions and carry on suits for them, but that such Attorney alleged that they were unable so to do, no process of the Court having been issued, or to be obtained since that time, That by reason of the premises, no business has been transacted in the said Court since the first day of November to the great loss and detriment of your petitioners and others That the reason for this refusal of Justice is the want of stamped papers, but your petitioners apprehend it is not the duty or business of suitors to provide and which cannot be had in this Province, as appears by his Honors' the Lieut Governor's Certificate under his Hand and Seal at Arms lodged in the Secretary's office That your petitioners conceive it is contrary to the principles of the British Constitution and the express words of the Great Charter so often confirmed and expressly of force in this Province that Justice or Right should be deferred or denied, And that they therefore cannot under any pretence be legally deprived of these remedies which they are entitled to, for recovery of their Rights and redress of Injuries That beside the many grievances occasioned by this refusal of Justice these irreparable ones are
(certain)

certain and notorious That many transitory persons in debt here have departed this Province against the Hill and without paying their Creditors. others who want to go and have debts due to them are grievously delayed and detained being unable to enforce payment. and numbers who had and others who have just and legal demands. will be for ever debarred of recovering the same by the Act of Limitation. that Your Petitioners humbly think the same reasons hold for conducting business in the Courts as justify the doing of it at the Custom House without Stamped Papers, nor can they see any cause, why the inhabitants of this Province should be unhappily distinguished in this Province from their fellow subjects in the other provinces where stamped papers are not to be had Your Petitioners therefore humbly and earnestly intreat your Honors to grant them relief. by issuing the process of the said Court, and ordering the Clerk and Attornies thereof. to carry on Business therein in the usual manner.

An Your Petitioners will ever pray and so forth.

John Paul Grimké. John Scott. M^{rs} Logan. Godfrey & Gadsden
 Tho^s & Roger Smith. Dawson & Dudley. John Newville. Edward
 Jones and C^o. John Logan. Croft and Dart. Guerin & Williamson
 George Duncan. Brian Cape. Downes Jones & C^o. Jⁿ^o & M^{rs} Baker
 James Byrns. John M^{rs} Call. Tho^s Shirley. Sam^l M^{rs} Atkins and
 M^{rs}ton. Tho^s Stone Jun^r. John M^{rs} Call Jun^r. Charlesford & Chapman
 John Edwards. Thomas Savage. Sam^l Poirneau. Shera & White
 Thomas Yow. William Sampfield. Peter Butler. Chris^t Simpson
 (Elf)

Elf and Hutchinson. Brewton and Smith. William Holliday John
Kirkwood. Darby Pendergrass. Rutledge and Leeseone. In^c Sarrazin
Michie and M^c Cauley. Edward Lightwood. Theodore Gaultard J^r
Thomas Moulhe. Paul Townsend. William Gibbs. Villepontcaux & Muring
Benfield and Jones. Arthur Downes. Samuel Prud'au Jun^r. Duane Peag
and C^o. Robert Dillon. William Savage. John Wagner. Rich^d. Millford.
John Stevenson. Davis and Mayne. Christopher Rogers. Philip Sydeman
Edward Lightwood Jun^r. James Courtonne. Stocker and Jackson. Chas
Yow. Charnock and King. George Parker

1st day of April 1866 (being the return day)

Present

The Chief Justice

M^r Justice Fringle. M^r Just^{ice} Smith. M^r Jus^{ice} Lowndes. M^r Jus^{ice} Boyley
James Jordan. M^r Sec Attorney for the Plaintiff having moved the
Joseph Lay Court for Judgement upon the Motion, formerly made
by him in this Cause. the consideration of which had been postponed to this day. their Honors the Assistant Judges by M^r Justice
Lowndes unanimously declared it as their opinion and gave
their reasons at large which he read that Judgement be ordered
for the plaintiff agreeable to the motion, in the usual manner as
has heretofore been done. no Stamp paper being to be had. And
in answer to the Petition presented and read at the last Adjournment day declared it as their further opinion. that the process
of this Court be issued out in the usual manner to any person
who

who shall apply for the same that there may no longer be a complaint that Justice is either denied or delayed. When His Honor the Chief Justice at large delivered his opinion (which he desired might be entered of record) that the Court ought not to open nor Business to go on, until the Act of Parliament imposing Stamp duties in His Majesty's American Colonies could be complied with. Douglass Campbell Esq. Clerk of this Court being then called upon to do his duty and enter the order for Judgement, humbly begged leave to decline paying obedience to the directions of this Court, at the same time offering some reasons for his non-compliance, which being disallowed of, William Mason Esq. was by the Court appointed to act as Clerk thereof (until the Assistant Judges have an opportunity to represent the conduct of the said Douglass Campbell to His Honor the Lieut Governor) and directed to enter the order for Judgement which was done accordingly. The said Douglass Campbell from particular tenderness and indulgence on account of his hitherto dutiful and diligent Behaviour in Office, not being proceeded against, with that strictness which his disobedience upon the present occasion merited, a piece of indulgence which this Court will by no means hereafter suffer to be drawn into a precedent. The Chief Justice desired the Assistant Judges to record their reasons but they declined it.

His Honor the Chief Justice's reply and reasons against opening the Court which he read in his place and delivered to the Clerk to be recorded

It is no part of my business to examine into the merits of the case which has caused so great commotions in these parts or to moot a question which has probably undergone the determination of the British Parliament. I shall therefore confine my observations to the application lately made to this Court by M^r Sec in the case of *Jordan v. Law*, which I intend to be my answer also to the Merchants Petition.

The apparent tendency of the Motion is that business may be carried on as usual in this Court and the Arguments in support thereof are briefly these That it is against Magna Charta to delay or deny Justice to the subjects, again the Law requires nothing impossible, and that by the Stamp distributors refusing to Act, no person can procure Stamp papers, in order to support this last fact the Lieut. Governors Certificate under his Hand and Seal at Arms is produced as evidence not to be disputed, the Gentlemen have called to their assistance a few commonplace Maxims, which they have wrested to their purpose, they strained hard for it and in my opinion have partially applied them.

It is notorious that the Stamp Officers, as well as the Stamp papers are arrived in this Province, the evidence of my senses has long convinced me of the certainty of the former fact. And the Governors Official declaration by advice of Council that the papers were lodged in Fort Johnson leave me no room to doubt of the latter, but (say they) the Officers refuse to Act and hence arises the impossibility which is urged as a substantial reason why the circulation of
(the)

the papers have never taken place. this may be the truth but it is not the whole truth I am unfortunately (alluding to the death of his wife who by frequent Mobs about his House in disguise in the night and continual terror on her was brought to bed before her time and died the 7th of January leaving two Infant children the Elder a Boy of Years old) too well warranted in saying that other causes have concurred to prevent the circulation and use of them.

If we refer ourselves for arguments to Maxims of Law. we shall find them uniform, consistent and compact. they are like an embattled Host. each moving to one General good. under the same principles and for the same extensive ends. instead of opposing they add to each others strength and become firm by an indissoluble Union. The sole question in this case is (as the Attorney General insisted) whether the impossibility so much urged. be a legal one or in other words. such as can be properly ranked under any of the Maxims cited for the purpose. the Law declares that no man shall avail himself of his own wrong. the like Law pronounces that no man shall carve out his own remedy and it is a principle of equal notoriety that the Laws of England cannot be changed but by authority of the parliament. from these grounds I reasonably infer that an impossibility. must not be created by wrong that if the subject be aggrieved by Law he must be redressed by Law and that obedience is due to every Statute from those to whom it extends. until the same Authority who made the Act shall graciously see fit to alter or Annul it.

If the Rules and maxims of the Common Law are allowed to determine in any case they must be construed that they shall not interfere with or oppose each other for it is absurd to assert that a Man shall not carve out his own remedy and yet shall be allowed under a different rule to prevent for his own private convenience the due operation of a Law. it is a principal of the Common Law that Statutes shall not bind the plantations, unless especially extended to them. but can there remain a doubt what part a Judge ought to act where the Law is plain and obvious has he a discretionary power to receive one Statute as the Rule of his conduct in Judgement and reject another do the Books of Jurisprudence authorise a Judge to explain or to give Law and is our constitution unsettled at this day in so important and interesting a concern. I am obliged by the tenor of my oath to take judicial notice of all public Acts, and it is a well known rule in evidence that Juries as well as Judges must take notice of a General Act of Parliament without being pleaded, and Lord Chief Baron Gilbert is express in this particular for says his Lord^p Judges are obliged by their oaths to judge all matters coming before them. *Secundum Leges and Consuetudines Angliæ* (according to the Laws and Customs of England) and therefore they can't be obliged *ex Officio* to take notice of a particular law because it is *Lex Angliæ* a Law relating to the whole kingdom But granting for arguments sake that the impossibility of obtaining Stamps did not arise from our own Act.

The

The Evidence which this Court is possessed of as a groundwork for our proceedings in direct opposition to the Law, is in fact, as much a Nullity, as any act in this Court would be without Stamp paper. I cannot better explain the duty we implicitly owe to the Laws of Great Britain than by adapting the words of Lord Chancellor Hardwicke, as taken from Atkin's reports Page 544 'Plantations were originally members of England, and governed by the Laws of England and persons went out originally subject to the Laws of England unless in some Regulations and Customs which they have a power of making' Permit me to observe tho not urged on the debate, that to assert that either House of parliament has a Legislative power without the King, subjects the speaker to the Guilt of a premunire, and it may not be an improper caution to reflect, what censure those persons may incur, who either actually or virtually deny the Legislative power of King, Lords and Commons of Great Britain over the Colonies in America. I am an utter Enemy to innovations and if there be a doubt it is most advisable to err on the safe side as it is more prudent to bear a temporary evil, than to transgress in any instance against a fundamental Rule of Law. I cannot give my consent or countenance to open this Court in defiance of Law I revere our happy constitution, it is a fair and noble structure, raised at the expence of our Ancestors Blood and treasure and I will not deface the stately fabric in which stands the Temple of true Liberty where many Saints and

(Confessors)

and Confessors and a whole Army of Martyrs have for Centuries past been offering up a glorious Incense. I am sorry to differ with my Brethren the Judges but they will excuse me because I do it upon principle. UPON the whole I do protest (as far as in my power extends) against permitting Business to go on in this Court upon Common Paper and against all Officers, Ministers Counsellors, Attornies and Suitors who shall be concerned in the same and I do strictly forbid all persons at their peril to do any Writ or Writs, Process or Processes in my Name. Delivered in Open Court the 1st day of April 1766. Charles Skinner

As it had been the invariable practice ever since the first establishment of the Court of Common Pleas in this Province to permit blank process ready signed and sealed to remain in the Clerks Office for the easier and more speedy accomodation of such Gentlemen of the Law as should apply for the same, but this being a practice which could not be continued under the Act for imposing Stamp duties in His Majesty's American dominions, notice was given by the Clerk that he would receive back & repay them for all such Blank Writs, as any of them might have purchased and not had a call for issuing, previous to the 1st of November last, notwithstanding which and the above protest and caution of His Honor the Chief Justice Thomas Bee Esq. one of the Attornies of the said Court, having kept some of the said Writs back, hath taken upon himself to Issue two of them since the 1st of April last, & others of them have done so too.

The Assistant Judges afterwards had prepared a
(remonstrance)

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remonstrance against the Clerk for disobedience of their order as he refused to enter the Judgement moved for by M^r Bee. they waited on His Honor the Lieutenant Governor thereof on Saturday the 5th of April to which its said he answered that he would lay the same before His Majesty's Council for their opinion on Monday next and would acquaint them by letter afterwards what his determination thereon should be

3 April 1766

The Representation of the Assistant Judges to His Honor Lieutenant Governor Bull to operate a suspension of the Clerk of the Court. To the Honorable William Bull Esq. Lieuten^t Governor and Commander in Chief in and over His Majesty's Province of South Carolina

The Humble Representation of the Assistant Judges of the said Province That at the Adjournment of the Court of Common Pleas held the 4th of March last a Motion for Judgement in a certain cause depending, and after hearing Arguments for and against the Motion the Court took till the return day (being Tuesday last) to give their opinion That on that day all the Judges being present solemn adjudication was pronounced that Judgement should pass in the usual manner as had heretofore been done in such cases only the Chief Justice dissented. that agreeable to the said Adjudication Douglas Campbell Esq. Clerk of the Court was directed to enter an Order for the said Judgement on Record as was his bounden duty and the constant and invariable practice of the said Court. That the said Douglas
(Campbell)

Campbell Esq. in manifest violation of his duty, and in contempt of the Authority of the Court publicly disputed and questioned the legality of the Judgement the Court had given and refused to carry their Order into execution. That altho the Court with the utmost tenderness and lenity admonished the said Clerk of the impropriety and absurdity of his conduct, yet the said Dougal Campbell obstinately persisted in refusing to obey the reiterated injunction of the Court for entering the said Judgement as the duty of his Office indispensibly should have obliged him to do. Wherefore the Court (not being permitted by Law to adjourn but to a distant day) were put to the necessity in order to prevent the Effect of their Judgement being eluded, and the Plaintiff defeated of his Right by the unprecedented and unjustifiable behaviour of the Clerk to nominate a Bystander to enter the Minutes of the Resolutions of the Court. That the Clerk by thus assuming to himself a right of Judging of the Propriety or Legality of any Judgement given by the Court, or of entering or refusing to enter their Resolutions, as the coincide or not with his own opinion, is in effect usurping the Authority of a Superior Court and taking upon himself to control and over rule their most solemn adjudications to the total inversion of all Law, order, Decency and Decorum and has an apparent tendency to bring the Courts of Law and its Judges into the utmost contempt insignification and dishonor. The Assistant Judges therefore humbly hope that so dangerous an Impediment and obstruction to the Legal, Natural and Constitutional Administration of the Laws may be removed (and)

and so daring an Outrage and attempt subversive of all subordination and authority may be discountenanced. All which is humbly submitted by Your Honors most obedient and most humble Servants

Charles Town

April 3rd 1766

Benjamin Smith

Daniel Ooley

Robert Pringle

Rawlins Lowndes

South Carolina

In the Council Chamber

Monday the 4th day of April 1766

Present

His Honor the Lieutenant Governor

The Hon ^{ble}	{	Othniel Seal.	Egerton Leigh.	Daniel Blake	} Esq ^{rs}
		Henry Middleton.	Charles Skinner.	Tho ^s Skottow	
		John Burn			

His Honor the Lieutenant Governor reminded the Board that, late on Saturday night he had informed them, that a complaint had been preferred to him by the Assistant Judges setting forth that Douglas Campbell Esq. Clerk of the Common Pleas had in a certain cause wherein they had given Judgement refused to enter up the said Judgement in Contempt of their Orders. he would therefore more fully lay the cause before them and for that purpose directed that the said Complaint or Representation (as before set forth) be read which was done accordingly. His Honor the Chief Justice observed that as he was alluded to in the Remonstrance of the Assist^{ant} Judges

(as)

as dissenting from their opinion he begged leave to lay before the B^d the reasons which he had urged in Court against their Judgement which he repeated and then withdrew The Clerk of the Board then informed his Honor the Lieut. Governor that M^r. Campbell had lodged a petition with him. which he desired him to present to his Honor and the same was ordered to be read which was done accordingly. viz!

So Carolina To the Honorable William Bull Esq. Lieutenant Governor and Commander in Chief in and over the Province aforesaid

The Petition of Douglas Campbell Esq. Clerk of His Majesty's Court of Common Pleas in the said Province

Humbly Sheweth that on the 3rd day of March last a motion was made in the said Court of Comm^a Pleas by Tho^s Bee Esq. Attorney for the plaintiff in a certain cause wherein one James Jordan. was plaintiff and Joseph Law defendant wherein having set forth that the declaration had been regularly filed, the rule to plead taken out and served previous to the first of November last and that the time for pleading had long since expired all which being acknowledged by the Defendants Attorney he M^r. Bee moved that he might have an order for Judgement entered in the usual and accustomed manner as no Stamp paper was to be had. That the Motion was supported by several Gentlemen of the Bar and was opposed only by the Hon^{ble} Egerton Leigh Esq. His Majesty's Attorney General (when)

when the matter being very fully argued the Court on the 14th day of March to which it had been adjourned agreed to postpone the further consideration of the Motion until Tuesday the 1st of April being the return day That on the said 14th of March a petition was presented to the Court by James Parsons Esq. from several of the Merchants, Traders, Freeholders and other Inhabitants of this Province which being received and read was found to contain a Prayer that the Process of the Court might be issued and that the Clerk and Attorneys thereof might be ordered to carry on business in the usual manner the consideration of which Petition was also postponed until the said 1st of April That the Return day being come and the Court met their Honors the Assistant Judges did by M^r Justice Loundes declare it as their unanimous opinion, for which they gave their reasons at large, that Judgement be ordered for the Plaintiff agreeable to the Motion, that the same be entered in the usual manner as has heretofore been done, no Stamp paper being to be had And in answer to the said petition declared it as their further opinion that the Process of this Court be issued in the usual manner to any Person who shall require and apply for the same that there may be no longer a complaint, that Justice is either denied or delayed, that hereupon His Honor the Chief Justice at large delivered his opinion (which he desired might be entered of Record that the Court ought not to be opened, nor business be carried on until the Act of Parliament imposing Stamp duties in His

(Mayestop)

Majesty's American dominions could be complied with, at the same
 time protesting as far as was in his power against permitting
 Business to go on in the said Court, upon unstamped paper, and
 against all such Officers, Ministers Councillors Attorneys and Suters
 as should be concerned in the same, also forbidding all persons at
 their peril to bestow any Hri or Process in his name That your Pet-
 itioner being called upon and enjoined as Clerk to enter the order
 for Judgement upon paper that had no stamp expressed his sor-
 row at being reduced to the disagreeable necessity of declining to
 pay an implicit obedience to the orders or directions of the Court
 humbly offered his Reasons for withholding his obedience in the
 best manner he was capable of doing it and concluded by saying
 that as the Act in Question (which during the whole course of the
 debate had been allowed to be of force in this Province) had in
 clear positive and explicit terms forbid under a heavy Penalty
 his doing what he had just received orders to do, unless Stamp
 Paper could be procured for that purpose, as he knew of no higher
 authority under the British Constitution, than that of an Act of
 Parliament he altho' a Ministerial Officer, durst not even under the
 sanction of the Court, take upon himself to proceed in direct oppo-
 sition to the united Act of King, Lords and Commons especially
 as he was but too well convinced, that the present impracticability
 or impossibility as it was termed, of carrying the Act into Execution
 which had been so strongly urged and insisted upon, did not
 (proceed)

proceed either from the Act of God or any other unavoidable accident. That being sworn to the faithful discharge of his duty, as well towards his Sovereign as his Subjects his conscience would not permit him to execute the order which had just been given him that he therefore most humbly begged leave to decline complying therewith and should as cheerfully as he was able submit himself to the pleasure of the Court That upon Your Petitioners non compliance as aforesaid, M^r Mason Esq. being asked whether or not he would undertake to do what your petitioner had declined and he assenting thereto was directed to enter the order in the usual manner which he did accordingly That the said M^r Mason was further ordered by their Honors the Assistant Judges. to act as Clerk of the Courts until they could have an opportunity of making known to Your Honor your Petitioner's conduct & behaviour That your petitioner having since been informed, that their Honors the Assistant Judges either have presented or intend to present to Your Honor a petition or Request in writing desiring to have your petitioner suspended for disobedience and neglect of duty, and another Clerk appointed in his Room. humbly hopes that before any determination be had thereupon he may be permitted to be heard in his own justification either by himself or by Counsel And your Petitioner as in duty bound will ever pray and so forth

Charles Town 4th April 1766

D Campbell C. C. P.

And M^r Campbell attending was agreeable to the Prayer of his Petition called in and being admitted to assign any further Reasons in justification of his Conduct, he humbly suggested to the Board
(that)

that, as the Stamp Act in several of the Clauses thereof, laid very heavy penalties in cases of disobedience upon all persons holding such Offices as that, with which he had the honor of being intrusted, he considered himself as very expressly named in every such Clause, each of which he looked upon as an especial mandate from the King, Lords & Commons particularly directed to, and binding upon him, that he therefore in this case considered himself, not as a merely passive, but as an accountable Agent, otherwise the Law would never have inflicted penalties upon him, for doing what it was not in his power to refuse and that it was solely from the dread of the penalties which he might thereby incur or for the other Reasons set forth in his petition and not out of any contempt or disregard to the Authority of the Court which in every matter not so peculiarly circumstanced, he should think it his indisputable duty to obey that he had not in the present case yielded an implicit obedience to the Orders of their Honors the assistant Judges. And being withdrawn his Honor the Lieutenant Governor informed the Board that tho' he had a power by the King's Instructions to suspend Officers yet as he was restrained from doing it unless for sufficient cause, he desired the opinion of the Board whether in the present case there was a sufficient cause to suspend the said Douglas Campbell Esq. from the execution of his Office and the Board after weighing the matter were of opinion, that as it did appear that Mr Campbell's disobedience & refusal to enter up the Judgement of the Court did not proceed from (contumacy)

contumacy or disrespect but from fear of incurring the Penalties inflicted by the Stamp Act and for divers other Reasons of some weight & consequence set forth in His Petition and as it is manifest by the Order lately made by the Judges in the case referred to. that particular tenderness and indulgence had been shewn him on account of his hitherto dutiful & diligent behaviour in Office. and as this is a case of a new impression and very singularly circumstanced he was clearly acquitted from any charge of wanton disobedience, contempt or disrespect. And therefore the Board were of opinion, that there was not a sufficient cause within the true meaning and reasonable intendment of the King's instructions to suspend him from the execution of his Office, and advised His Honor accordingly.

This having failed, for the purpose of opening the Courts another expedient was tried viz^t: On Tuesday the 15th of April The Chief Justice heard that Francis Stokes Master of a Ship had been arrested, by the Provost Marshall upon a Writ as the Suit of Robert Graham and had been committed to Goal. the Chief Justice replied it could not be true for that the Clerk returned to him all the Blank Writs he had in his Office and as many more as he could collect from the Attornies that were not made use of before the 1st day of November last since which time he had neither signed or sealed any Writ or Process of the Court and upon His Honors asking who was Attorney to the Writ. he was told it was M^r Dec. in the evening the Chief Justice met the Provost Marshal in the Streets (the Attorney General just then passing by
(whom)

whom he immediately called to him) and in Mr. Leigh's presence asked the Provost Marshal concerning the Arrest who answered, he had done so, and said in Excuse that he was a Ministerial Officer and that it must be at his peril if he did not execute the Writ given to him in the Chief Justice's Name and Seal of the Court thereto. he was then asked if he did not remember his Honors protest in open Court against making use of his Name or Seal of the Court affixed to any other but Stamp paper, and was he not desired first to shew every such Writ produced to him not upon Stamped paper to the Chief Justice before he executed the same. his answer was as above that he was a Ministerial Officer, and that whilst he was going to shew the Writ to His Honor the Defendants might get off and that the Plaintiff might perhaps bring his Action against him.

The next day 16th of April two of the Attornies formally waited on His Honor and acquainted him with the Arrest of the said Francis Stokes, by Virtue of a Writ issued by Mr. Bee at the suit of Robert Graham. they alleged that the arrest was unlawful, as the Writ was not upon Stamp paper, pursuant to the late Act, and that His Honors public protest against Attornies, using any Writ in his Name but on Stamp paper and that the Writ in question bore test 1st of April last therefore they charged it to be a Blank Writ filled up for this purpose and prayed his Honor to order that the said Stokes be discharged. The Chief Justice observed to them that such an Order was one of the Enumerated Articles charged with the
(Stamp)

Stamp duty. but that however he would give an order, or rather a direction for that purpose to the provost Marshal a Copy whereof follows:
South Carolina

To Roger Inckney Esq Provost Marshal of the Province aforesaid or his Deputy. Whereas I have protested in open Court against every Attorney taking any Writ in my Name, unless such Writ should be upon Stamped paper. And Whereas it clearly appears to me, that Thomas Bee Esq, one of the Attornies of the Court of Common Pleas in this Province, hath since such protestation, tested a Writ in my Name against one Francis Stokes at the suit of one Robert Graham, which said Francis Stokes is now as I am informed, in your Custody, I do hereby order you immediately to discharge and set at liberty the said Francis Stokes. Dated 17th April 1766

Charles Skinner

M^r Bee Attorney for the Plaintiff waited on the Assistant Judges or one of them, with the Original or a Copy of the above Order, and obtained another Order from them for the detaining and keeping in Custody the said Stokes on the Writ aforesaid a Copy of which follows

Robert Graham } In the Common Pleas

Francis Stokes } On Motion of M^r Bee Attorney for the Plaintiff in this Cause it is Ordered that the Chief Justice's Order to the provost Marshal dated 17th Instant to discharge and set at liberty the said Francis Stokes the Defendant, be set aside, it appearing to me that there is the same impossibility of procuring Stamped paper
 (now)

now which there was on the last return day when the Court ordered contrary to the opinion of the Chief Justice that the business of the Court should be carried on as usual without stamped papers. Dated at Charles Town the 18th of April 1766. Rob^t Fungle. Benjⁿ Smith.

The defendant Stokes finding no relief, was advised by his Attorney to petition His Honor the Lieut Governor thereupon, which he did, and His Honor thought fit to lay the same before His Majesty's Council for their Advice.

S^c Carolina In the Council Chamber
Present

His Honor the Lieut Governor

To the Hon^{ble} William Bull Esq. Lieut Gov^r and Commander in Chief in and over His Majesty's Province aforesaid

The Humble Petition of Francis Stokes. Mariner

Sheweth That Petitioner was on the day of April instant, arrested and thrown into Goal where he still remains by virtue of a Writ appearing to be signed by His Honor the Chief Justice of this Province bearing date the first of April aforesaid That Petitioner being credibly informed that the said Chief Justice did antecedent to the issuing the said Writ in open Court, not only protest against any Writs issuing in his Name until the pleasure of the King his Master was known respecting the Stamp Act, but also revoked every Writ signed by him before the first of November last, which broke in upon the said Act, and so far as in him lay make such Writ null and void. Your Petitioner
(therefore)

therefore laid his case before the Chief Justice, and he in confirmation of his protest and declaration aforesaid was pleased to order the Provost Marshal to discharge your Petitioner from said Action, which he refused to comply with alleging that he is countermanded by the Assistant Judges, altho your Petitioner is advised, and humbly apprehends they have no power to make him alter his opinion, much less oblige him (whether he will or not) to have his name made use of in a Writ, that his Conscience, his Oath and duty to his Master, tells him is illegal, arbitrary and in violation of a public Act of Parliament not yet annulled, sued forth to the prejudice of a Subject, who by the same course nor any other remedy can, tho in distress, recover a penny due to him. That for these and many other reasons which Your Petitioner could expatiate on, your Petitioner apprehends, but humbly submits to your Honor, he is illegally and contrary to the (alas) neglect genius and policy of the British Constitution, detained in prison, and the rather as your Petitioner is prepared and willing to bail said Action, but is informed that entering Bail at this juncture is altogether impracticable, for want of a Stamped Bail piece, nor can y^r Petitioner from a consciousness of the illegality of the Plaintiffs demand, pass him (should he accept of the same) a note of hand or a verbal security inasmuch as such Method would amount to an admission of a cause of Action that your Petitioner doubts not to Non-Suit.

That your Petitioner by being thus confined and deprived of all means of obtaining his liberty, hath suffered considerably, the
(command)

command of His ship committed to another Captain his Wages denied to be paid, several valuable Articles of his property on Board his Ship detained from him, and divers other very prejudicial inconveniencies, too tedious to trouble your Honor with. Brought upon your petitioner, neither can your petitioner as he is advised, though thus oppressed, stripped and detained in prison, venture to sue forth any writ or action at Law, against such as owe him fair and just debts who taking advantage of the present pestilence, refuse to supply your petitioner with Value or any other consideration Inasmuch therefore as your petitioner lies under those intolerable inconveniencies, deprived of the means of prosecuting his calling for a livelihood his character totally impaired and with all so circumstanced as to be obliged to live on the bare allowance of a Soal (viz^t) Bread and Water, not being able for his support to enforce payment of just demands, Your petitioner for these Reasons humbly hopes, that your Honor will interpose so far as to order Bail to be taken for him in the usual way or to be set at liberty And your petitioner will ever pray

Francis Stokes

Upon which no relief for the present could be given by his Honor the Lieut Governor, but, that the Prisoner do hereafter avail himself of the benefit of the Law

Again the following further expedient was tried for opening of the Court, under an Act of Assembly for holding a Special Court of Pleas for the ready trial of transient Persons

(South)

South Carolina To the Honorable William Bull Esq. Lieut.
Governor and Commander in Chief in and over
the said Province

The humble Petition of James Brown. Sheweth that your
Petitioner is a transient person, hath not lived or resided in this province
above the space of three months and intends to depart this province
within ten days next ensuing That your Petitioner has lately commenced
an action in a plea of Trespass on the case, in the Court of Common Pleas
against John Shute for a debt due by him to your Petitioner. Your Petitioner
therefore prays your Honor to order the Chief Justice to hold a
Special Court of Common Pleas for hearing, trying and determining the
said cause, Pursuant to the Act of the General Assembly in such case
made and provided And your Petitioner will ever pray

James Brown

South Carolina By the Hon^{ble} Will^m Bull Esq. Lieut. Governor &
Commander in Chief in and over the said province

To the Hon^{ble} Charles Skinner Esq. Chief Justice of the province

Sir

You are hereby directed to hold a Special Court of Common Pleas
for hearing, trying and determining the cause abovementioned pursuant
to the directions of the Act of the General Assembly in such case made
and provided. April 10th 1766

William Bull

This attempt to open a Court of Common Pleas against Law and
against the oath he had taken greatly distressed the Lt Governor

(The)

The Chief Justice being then in Council told His Honor that by the Jury Law he ought to give such Order and that when it came to him the Chief Justice he would give it an answer whereby the dilemma would be taken off his Honor and would rest with him

The Chief Justice was served with the Petition and the Lieutenant Governor's Order at the foot thereof. for holding a Special Court of Common Pleas to which he gave the following answer by letter to His Honor. Sir

My attention to the duties of my Station makes me earnest at all times to execute your Honors Orders and it is my ardent wish to expedite (as much as in me lyed) Public Justice but on the present occasion I am sorry to inform your Honor that it is by no means in my power to give directions for holding a Special Court, inasmuch as I determined on the first Instant in open Court in a case depending before me and the Assistant Judges that whilst the Stamp Act is of force, no business can go on under our present circumstances upon common paper and I am too well persuaded of your Honors regard for the Constitution to suppose that you mean by the Order of this day, to control my opinion in Judgement and I am convinced your Honor can only intend, that a Special Court of Pleas should be held according to Law. I am with the greatest respect

10 April 1766

Your Honors most humble and obed^t Servant

Charles Skinner

To the Hon^{ble} Will^m Bull Esq. Lt Governor &c of S^c Carolina

(The)

80/27

The Chief Justice in the afternoon received a Letter from the Hon. Othniel Beal Esq. President of the Council (whose daughter is wife to the Lieut. Governor) a Copy of which is as followeth:-

My dear Sir

As I would always desire that every Member of the Council may act with propriety and acquit themselves with Honor and defeat the designs of low and mean Artifice of their Enemies. it affords me great pleasure to see the way clear, that you may exult in the Issue of the affair this day laid at your door I have industriously sought and conferred with J. Shute as his friend and hope that tomorrow he will be possessed of a full receipt from Brown. I have let him know that if he cannot raise all the money tomorrow morning that I would lend a small matter You may be silent therefore till we see what the day brings forth. I am in the most respectful manner, Dear Sir

Your obedient Humble Servant

Othniel Beale

After the Chief Justice had received this letter M^r Bee Attorney to the Plaintiff came out to the House of the Chief Justice at tea time. he having then Company with him at tea M^r Bee told the Chief Justice (in presence of his Company) he wanted to speak with him aside. he answered that he (M^r Bee) was a person he did not desire to have private conference with and therefore desired he would there mention his Business M^r Bee asked if His Honor had received (The)

The Lieut. Governor's order for holding a Special Court of pleas upon the petition of Brown against Shute the Chief Justice replied he had received such order and given his answer by Letter to the Lieutenant Governor, upon which M^r Bee took his leave and went off cavalierly, thus ended the expedient for opening the Court of Common Pleas.

After which the next morning the Chief Justice received short notes of what passed at the Exchange (called the Vendue House) the Even^g before wrote from one friend to another, and is as follows:-

Saturday 11th April 1766

Dear Sir

In return for your news, receive this, I have seen Sadsden and Bee at the Exchange, the former asking what had been done Bee answered the Chief Justice would not open the Court, but it was no matter for the parties had made up their dispute, but added, that he the Chief Justice having refused, sufficient cause of complaint lies against him. Sadsden asked if the Chief Justice had given an answer in writing, he answered yes, but that the Govern^r would not give it up and that the Chief Justice kept the Petition and Governor's Order upon which it was proposed that this matter should be laid before the Committee, on the Merchants petition for the opening the Court, and as the House would send for Persons Papers and Records, they must be got at that way. M^r Bee added that at all events the Court would be opened in May. Sadsden has a letter from the Lower Counties on Delaware that all process in
(the)

the Courts of Law goes on there without Stamp-papers which he shewed to Hragg while I was at the Exchange.

Capt. Christopher Chismen arrived in 20 days from Mobile. a letter of the 15th of March to a Merchant here says. We have now the pleasure of acquainting you that the Spaniards are arrived at New Orleans which we are assured is to be a free port. 10 April 1766

On Saturday 3rd May arrived a Ship from Barbadoes. which brought an account to several Merchants here that the Stamp-Act was repealed. that they at Barbadoes had been informed of it by letters from Sir John Gibbon a Member of parliament in England to his friends at Barbadoes intimating the Repeal of the Stamp-Act. whereon was a Majority in the House of 108 Vide the Gazette extraordinary of which the following is a Copy:-

The South Carolina Gazette & Country Journal Extraordinary
Charles Town May 3rd 1766. This day at Noon Capt^r Josiah Dickenson arrived here in a short passage from Barbadoes who brought us the following very agreeable and Important Intelligence. which was delivered to him just before he sailed and which we heartily hope may prove true Viz! Extract of a letter from a Gentleman in London to his Friend in Barbadoes dated February 22nd 1766
This morning at Two o'clock the important Resolution of Repealing the Stamp Act absolutely without any Modification was carried in a Committee of the whole House of Commons by a Majority of 108. The Motion was made by M^r Secretary Conway supported by the
(Attorney)

Attorney General. M^r Pitt. M^r Burke. M^r Cooper & five Speakers whilst I attended, spent five hours on the subject. as the Majority will probably be larger in proportion in the House of Peers I hasten this confirmation of my last to the Couriers and beg you to communicate it to the rest of our Friends in Barbadoes.

Another of the same date

This serves just to tell you that the Stamp Act was repealed this day I send this after Captain Lee in the Couriers as I am persuaded this will be an agreeable piece of news.

Extracts concerning this account of the Repeal were immediately Printed and public rejoicings shewn thereupon but as my House was a House of Mourning because of the death of my Wife who by mobs and Fights about our House and her fear of my meeting some Misfortune abroad when I went out, and that every night we had some Arms conveniently laid by the Bedside for fear of an attack upon our lives, this brought on her Labour before her time of which she died, in some days after her delivery I thought I might be excused from shewing that outward sign of joy, but yet I had a visit about 9 o'clock in the night. On Monday the 5th of May M^r Campbell Clerk of the Court waited on the Chief Justice to know if he should open the Office of the Court of Common Pleas to carry on business as usual the Chief Justice thought proper first to consult the Lieut Governor thereupon to know if he had any particular account or Instructions about it which he did accordingly and

(took)

took the Clerk with him. The Lieut Governor said he believed from the Credit of the Letters from Barbadoes and that Sir John Gibbons was said to be the author of the Account sent thither. he the Lieut. Gov^r thought the Courts might be opened but added that people must judge for themselves. some discourse passed (pretty warmly) but with great deference and respect to the Lieut Governor, who said he would open his Courts of Chancery and Ordinary (as he once has done) about the Authority of the Court should have for carrying on business until some Public Act, Order or Instruction from home should appear to give it operation and sanction for so doing the Chief Justice took leave of His Honor and withdrew.

About 1 o'clock P.M. the Chief Justice received the following letter from His Honor the Lieutenant Governor

Monday 5th May 1766

Sir

Having received some intimation from Persons of great gravity and discretion that it is probable there may be some riotous or disturbance this night. In order to preserve the public Peace. I have ordered all the Watch Company upon duty this night. I therefore recommend it to you to order the Civil Officers and especially the Constables to be attentive thereto. I am Sir,

Your most humble Servant

To the Hon^{ble}

William Bull

Charles Skinner Esq. Chief Justice of South Carolina

(The)

The Chief Justice immediately and before he sat down to dinner, wrote two letters (to wit) one to the Provost-Marshal to desire him to summon the Constables 1st to attend him the other to the Clerk of the Crown to desire he would give notice to the Magistrates, of what the Lieut. Governor, by his letter, had informed him of and to desire that they would be attentive to, and (as much as in their power lay) strive to preserve the public peace that night, as the mob had given out that they would insult every House that was not again illuminated this night also, as well as Saturday night when they had done great mischief to many. The Chief Justice apprehended this second illumination upon no other certain evidence than as before mentioned to have been received from Barbadoes, thought something particular was intended against him, and after dinner went into Town, to speak to some he thought his Friends, to receive his Son and daughter (two Infant Children the eldest turned off two years old) that night under their protection. This request (Oh! humanity whether art thou free) was in a Civil plausible manner not complied with. He had before he went to Town ordered his servants to prepare for lighting up the windows of his House. he returned home early in the evening and prepared for whatsoever might happen. he ordered the Candles to be lighted up in due time, he was saluted between the hours of 9 and 10 o'clock with Cheers and Huzzas and Ramos of the Scotch but nothing as he apprehended happened to him or his Family that night though he has since heard of great damage that was done in Town on Saturday night and on this night also.

(He)

The Clerk of the Court Mr Campbell from what His Honor the Lieut Gov^r said to him upon the subject of giving Credit to the Letters from Barbadoes and saying that he would open the Courts of Chancery and Ordinary in his department, thought he may be justified in Obedience to the Orders of the Assistant Judges, and carry on business in the usual way without the use of Stamp paper - Thus he intimated to the Chief Justice and added that he hoped it would not be disagreeable to him, to which he answered that he thought he should be consistent a little longer, but seeing that he was determined the Chief Justice spoke short to him and said "Every man for himself O house of Israel" and turned off, since which Mr Campbell carries on business in the usual way without Stamps and the Writs are witnessed by Mr Pringle the eldest Assistant Judge and others of them (as if the Chief Justice was absent) and seated with his Seat at Arms, instead of the Seat of the Court which is yet in the hands of the Chief Justice. The present opinion of the Chief Justice is, that all those proceedings are totally wrong and erroneous and ought to be set aside, but in this and every other matter that may come before him hereafter, he has great reason to apprehend, that the Assistant Judges will make him very uneasy. On Tuesday May 6th instant, appeared a most false and scandalous and infamous Libel put into the public paper, reflecting on the Chief Justice and on Hon^{ble} Patron, it is said for some purpose of the following day when it was intended he should be attacked by a power he could not resist (The assembly) and that he would be obliged to affix the Seal of the Court to Writs and to do Business (en)

in the usual way. A letter appeared in Town wherein it was said His Honors Station was to act in a very high Station, which perhaps was the reason that he has heard nothing of the matter yet, several of the attorneys have applied to him to do business which he declined, and perhaps the provincial Agent at home may be directed by a letter of Instruction to him to do his utmost to represent the Chief Justice, as a positive headstrong man who will not be convinced altho His Honor the Lieut Governor and his Honor the Attorney General as Judge of the Admiralty, have opened their Courts That yet the Chief Justice of the Court of Common Pleas gives no faith, nor will be influenced to open that Court for the relief of the subjects under the present circumstances until he hath received sufficient Authority so to do, or Instructions from England for that purpose, but must acknowledge that he is obliged to the Attorney General only, with whom he could with any confidence confer on these unhappy affairs and who supported him in public in defence of his Conduct. it is now within an Hour of Sealing up the mail for England by the Packet, much more is to be said in these matters, but time will not permit, even to compare with the draft much less to note the paragraphs of this paper however it is hoped there is sufficient for the present until the next opportunity of another packets sailing from hence by which and by no other conveyance it is thought safe.

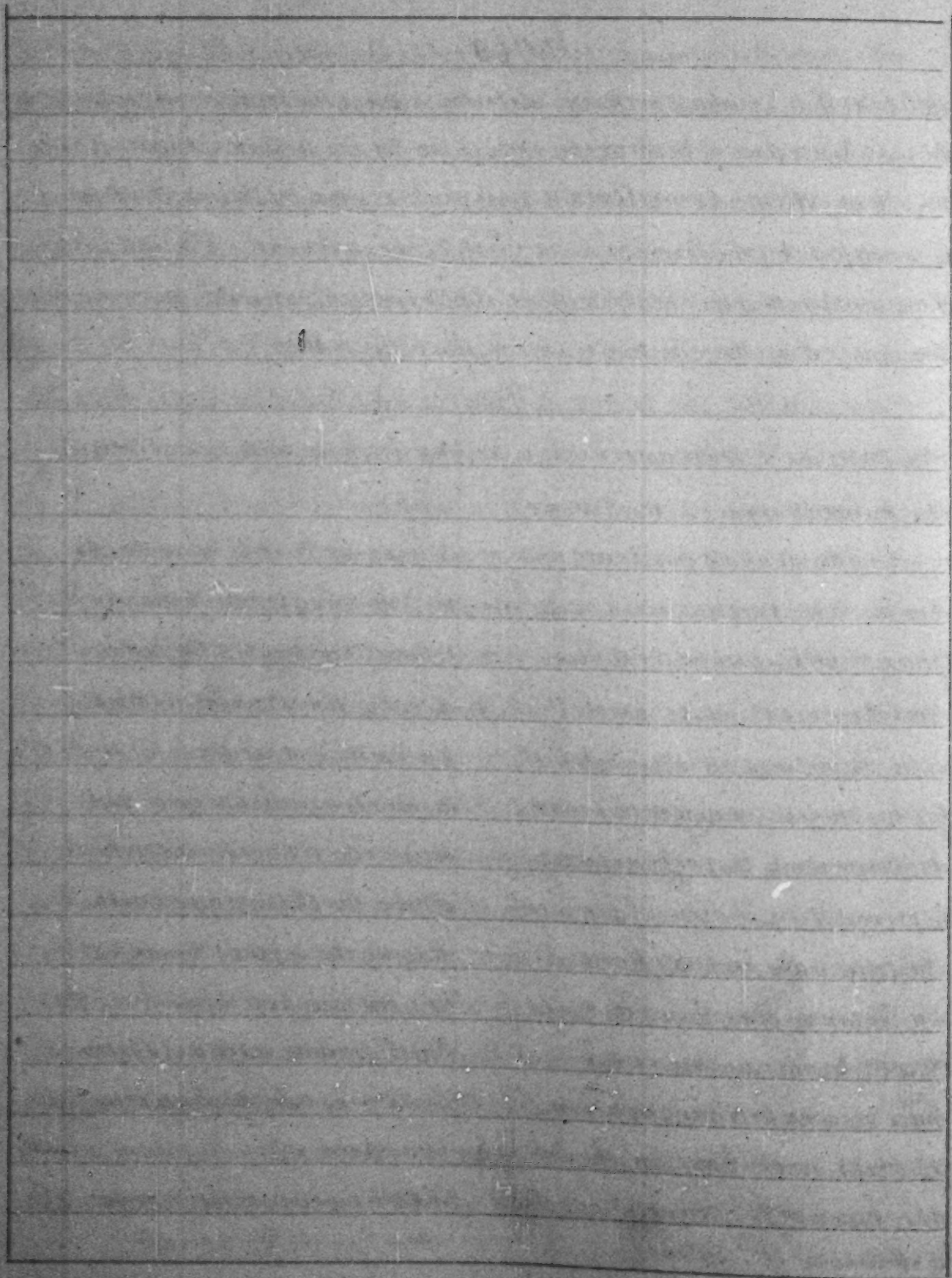
Please to observe the Resolutions of the House of Assembly or rather their Committee, a Copy of which in the handwriting of M^r

M^r. Bee. was shewn to the Chief Justice by M^r. Campbell the Clerk, his
 honor suspects that some paragraphs towards the latter end, were calcula-
 ted and shewn to him as authentic for the purpose of intimidating
 him, all of which he ordered his domestic Clerk to take a copy and is
 hereto annexed (it is in print). M^r. Campbell Clerk of the Court (it is
 believed immediately made his Recantation to the Assistant Judges, in
 order to make his peace with them, and offered to do business as usual
 before the Repeal of the Stamp act was fully ratified. The Chief Justice
 frequently saw him pass his door upon business to M^r. Lowndes
 one of the Assistant Judges, when he would scarcely vouchsafe to see
 the Chief Justice as he passed by, seeing himself thus deserted by
 all the Officers of the Court and afterwards when in Court, to see him,
 the Kings Chief Justice wanting support and impotent in Power, and
 that everything was carried against him, with a high hand and he
 having no hopes of any redress or alleviation of his trouble, from him
 the (Lieutenant Governor) whose duty it was to give it, he was obliged
 to sit still and sup up the bitter draught, and reduced to that diffi-
 culty in his circumstances, as to have but a French half Crown and
 Eighteen pence English silver Coin, left to send to Market for the support
 of his family, as almost every debt he owed was running upon him
 and he paid them so far as he had money to discharge them, that
 it should not be said he availed himself by the protection of his
 Station, or plead the Stamp act in Abatement of their suit, tho' he
 believes none would have pushed it so far if he meant to do so

(The)

The next Adjournment day after the Apostacy of Dougal Campbell the Assistant Judges (who it is believed) were not satisfied of his sincerity nor with his humble obedient complaisance, and constant attendance on them. they nevertheless believed and assumed they had the power of Vengeance in their hands, and fined him the sum of One hundred pounds Proclamation Money for disobeying their orders in not entering the Judgement in the Cause of Jordan v Law, but His Honor the Lieut. Governor respite the payment thereof to a further day to give him an opportunity to apply for a reduction of the Fine to the ministry of their Lordships of the Treasury.

The Seal of the Court still remains in the Hands of the Chief Justice who keeps it with a determined Resolution, that the same shall not be put to any Execution, where the proceedings have been founded upon those false Writs issued by the Assistant Judges who have signed them with their own names and put the seals of Arms thereto and falsely called them the Kings Writs, and publicly dispute and insist that their Commissions and the Chief Justices spring from the same fountain, that their right is equal with his that they are his Associates (a word they are very fond of) and that in Justice they have a right to share the Decs of Office for whatsoever business they may do if the Chief Justice will not act and put the Seal of the Courts to the Writs they may perhaps dispute the Decs with him, for the business they have already done, since the time of the report from Barbadoes, that the Stamp Act was repealed.



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The Lieutenant Governors concern- how
expressed. His reasons for opening the post
but had no directions to give the Clerk for
his conduct. That it was the province
of the Judges to give Orders.

The Lieutenant Gov^rs doubt that if
the Courts were opened what the Coun-
try would expect from him. And
referred the Clerk to his discretion.

The Lawyers saw the Ch. Justice in
the Street and requested a meeting.
he gives them a Meeting in the Office
and being informed of their business
that it was to get process as usual.
he answered and directed that their
application be in writing signed
by such as were for it.

The Chief Justice waited on the Lt
Governor and acquainted him
with his reasons for ordering the
Memorial or Petition of the Lawyers
to be signed.

The Chief Justice also informed the
Lieut Governor that he had not seen

the stamp act. And prays his
Honor to let him see it and his
Instructions thereon.

The Lieut Governor answered
that he had no Instructions, and
that the Act were made up in the
Packages. And further answered
that the Act must be the Guide of
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The Chief Justice's further Arguments
as not having seen the Act. His
hardships under the circumstances
urged his fear of erring.
Lieut. Gov^rs reply that the Ignor-
ance of Law doth not excuse. The
Chief Justice withdraws.

The Chief Justice afterwards met
with the Inspector of the Stamp
Duties, and requests him for a
Copy of the Act and got it. well was
afterwards (as he believes) picked
out of his pocket in the Throng
of the Court.

He then ordered the Clerk to return

(all)

all the Blank Writs to him that were in the Office. or in the hands of the Attornies to be cancelled. And forbid the use of the Seal.

His Orders to the Provost Marshall and observation that an Improper use might be made of Writs

The Provost Marshall's answer declaring that he will adhere strictly to the Chief Justice's Order

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Associate Judges appointed Copies of their Commissions annexed but not inserted

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That the Assistant Judges were appointed with a view of overruling

10 the Chief Justice and open the Courts against Law

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A motion for a judgement by default moved by M^r Bee

The Chief Justice's request for time to consider the Act. but was overruled by the Assistant Judges

11 and would give him till next evening only

M^r Bee's Motion renewed and by whom supported. but opposed by M^r Attorney General

The Court Consider of the Motion and postpone giving judgement till next Return day

Petition of the Merchants and 1st read same time. Consideration thereof postponed also

Copy of the Merchants Petition 15 Names of the Petitioners

Motion for Judgement by M^r Bee

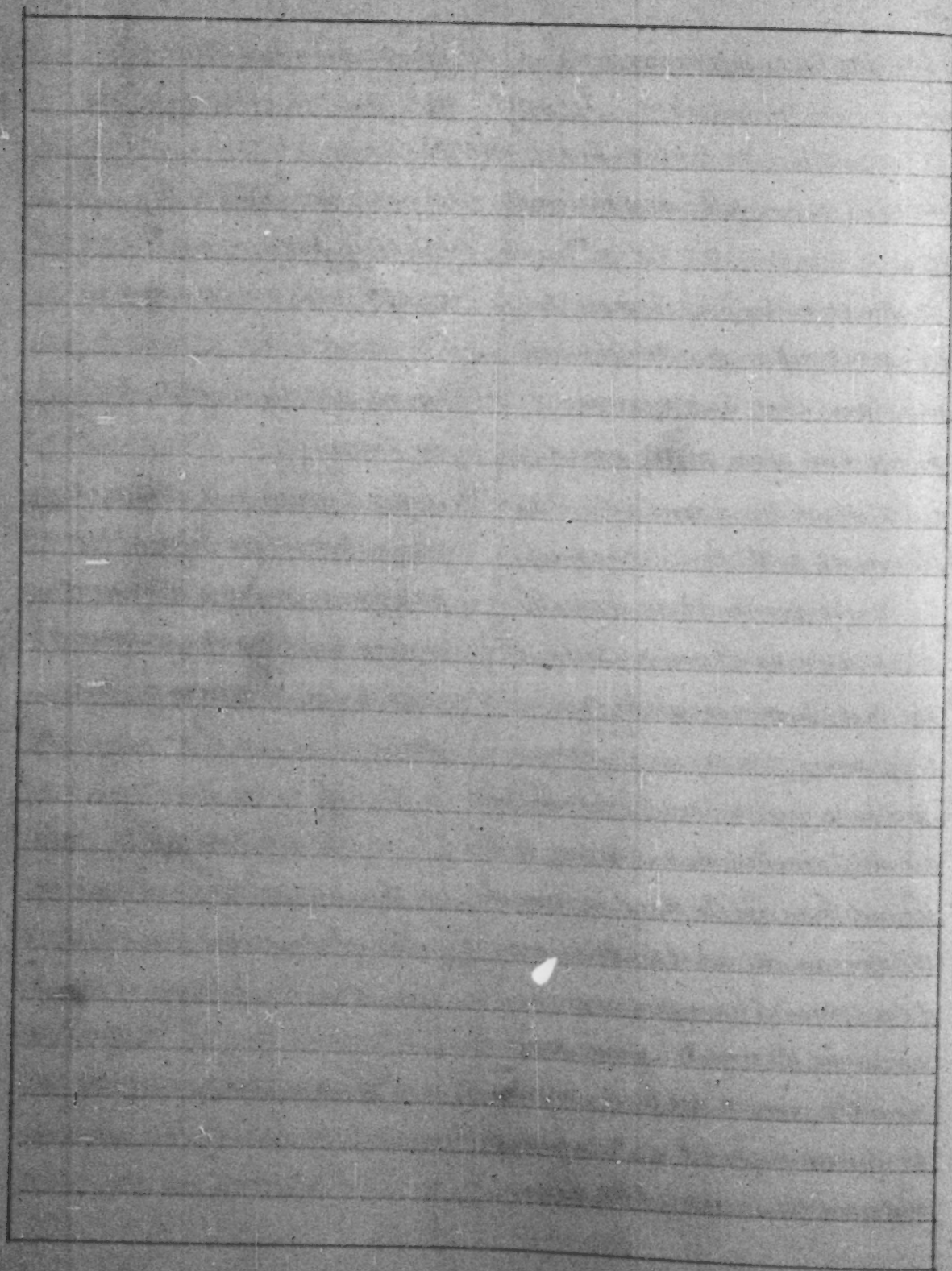
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The Ch. Justice's reasons and reply as he read them in Court are entered of record		that Judges are bound by their oaths to Judge all matters that come before them according to the Laws & Customs of England	
Notes thereof viz ^t			
That Ch. Justice will not move upon the Statute - but will answer to the Motion of M ^r Deane & P ^r est ^r of the Merchants Tendency of Motion that business be carried on as usual. Arguments in support of it against the right of the Subject to be denied and impossibility of getting Stamps.	19	An Admission for argument about the impossibility of obtaining Stamps and reply thereto that it was from our own Act and that the Stamps and distributors are in the Hands	
A Replication to their Arguments & to their Maxims of Law		Remark on the duty we owe to British Laws and Observation on the rights of Parliament	22
What the sole question really is it is be a necessity thro ^u g ^h the act of God Observations thereon	20	A caution that to assert either House of Par ^l has a legislative power without the King subjects the Speaker to the Guilt of Premunure	(20)

To avoid Censure by actually or virtual- ly denying the legislative power of King Lords and Commons.	22	A Council called thereupon The Lieutenant Governor opened the Subject to the Board	26
The Chief Justice dissents to the Opinion of the Assistants & protests against all Officers. Ministers. Coun- sellors Attornies and Sutors who shall be concerned in carrying on Business in Court upon Common paper or test Writ in his Name	23	The Ch. Justice's Arguments in support of the Clerk Copy of the Clerks petition to the Lieut. Governor praying to be heard by himself or by Counsel and he attending was called in and soon after withdrew	30
The practice of permitting blank pro- cess ready signed and sealed to re- main in the Clerks Office to be altered by the Stamp Act.	24	The Lieut Gov ^r s information to the Board with regard to His instructions to suspend Officers	31
Notice given to the Attornies to return the Blank Writs but they obstinately offend		The Opinion of the Board that there was not sufficient cause to suspend the Clerk	32
The Assistants charge the Clerk with disobedience of their Order to enter the Motion and Judgement and complain		Another operation tried for opening the Court and doing Business	32
of him to the Lt Gov ^r by remonstrance Representation of the Assistants to cause a suspension of the Clerk Copy of their Representation to the Lieut. Governor	26	Francis Stokes arrested on a Blank Writ filled up and tested since the Stamp Act took place M ^r . Bee Att ^y to the Writ The Provost Marshall question (thereon)	33

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thereon his answer that he was only a ministerial Officer. The Proc ^t . Marshal further questioned. his further answer tending to the like purpose		Order to Chief Justice on said petition 10 th April 1766.	38
The Chief Justice's Observations. 1701 abt. 687. R. Sac. abt. 156. Cro. Eliz. 646 no warrant to Sheriff to take one by process which a Court has no authority to grant		Observations on this matter	
Chief Justice's order to enlarge prisoner. M ^r . Bee Att ^y for the plaintiff obtained from the Assistant Judges an order for detaining the prisoner and for setting aside the order of the Ch. Justice	33	The Ch. Justice's Advice to His Honor the Lt Governor in Council and his Answer to Lieut Gov ^{rs} letter and Order of 10 th Ap ^l . 1766	39
Defendant Stokes resolves to petition the Lieut Governor.		Copy of Col Beale's Letter to the Ch. Justice. His interpreting lest thereby his son in Law the Lt Governor should be blamed by the ministry for his giving such an order to open the C ^t against Law.	40
Copy of his petition		M ^r . Bee Plaintiffs Att ^y called on the Chief Justice at his House the business and discourse thereon	
No other relief for prisoner but that he may afterwards recur to Law & further expedients tried for opening the Court	34	This business how spoke of on the Exchange that evening and the scheme against the Ch. Justice when the assembly should meet	41
The Petition of James Brown a transient person for holding a Special Court of Common Pleas		3 rd May 1766 the S ^c Carol ^a Gazette Extra ^r being first news of repeal of Stamp Act from Barbadoes by Letter only.	42
		(Some)	

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Some Remarks on the Joy of the News from Barbadoes		The Apostacy of the Clerk of the Court upon this News from Bar	
5 th May 1766. The Clerk waited on the Chief Justice to know if he would open the Courts	43	badoes and began to do business in the usual way	
They went to the Lieut. Governor to advise thereupon, their conversation with him, Chief Justice doubted the Report, and spoke pretty warmly		The Chief Justices open ^d upon such Miss as are not noted in his name	46
but with all due respect to the Lt Gov ^r At 1 o'clock p. m. the Chief Justice received the following letter from the Lieut Gov ^r apprehending Riots	44	A letter directed to M ^r Barons deputy Postmaster General appeared in Town wherein it was said His Honors station	47
The Chief Justice issued his orders thereupon.		was to act in a very high Station	48
His fears for his Family, the more so as M ^r Campbell that Morning had shewed him, in the hand writing of M ^r Bee, an extract of the Resolutions of the House of Assembly indicating (as in the 5 th and 6 th Resolution) that they would not be answerable for the consequence of Riots having done what they could to keep the peace	45		



1227
The Court met according to Adjournment 13th May 1766

Present

The Chief Justice

M^r Justice Pringle M^r Justice Loundes

M^r Justice Smith M^r Justice Coyley

The Court by M^r Justice Pringle ordered that the Sheriff Marshall be directed to return the Writ of Venue when the Clerk humbly informed the Court that none had been issued. The reasons which his Honor the Chief Justice had given on the return day against opening the Court were then read which being done M^r Justice Loundes proceeded to deliver the sentiments of the Court touching the said reasons in the follow^g Manner

His Honor the Chief Justice having been pleased to Order the Opinion he delivered on the 1st day of April last containing his Reasons for being against the Motion y^t the Court took till that day to deliberate upon to be recorded and some expressions therein made use of seeming indirectly to tax the Judges who differed in opinion with His Honor with denying the Legislative power of King Lords and Commons of Great Britain over the Colonies in America in the Judgement they gave on that occasion which expressions the other Judges immediately objected to as conveying a very different Idea from what the Judgement they gave would authorize. And his Honor being promised that the said Exceptionable words should be Expunged and it appearing notwithstanding that they are not but are made a Record of the Court. The rest of the Judges find themselves indispensably obliged to Record also their own
(Adjudication)

Adjudication on that matter as a vindication of their conduct from any designed or implied insinuation not supported by fact. The Assistant Judges cannot avoid taking notice of the novel and strange conclusion in the Chief Justice's opinion wherein he would as far as his power extends frustrate and defeat the very end and intention of the Judges appointment by setting up the Judgement of one Judge in opposition to that of the rest of the whole Bench thereby inverting the well known order of Judicial determinations and establishing contrary to all usage a precedent that the Minority shall include the Majority which would inevitably be the case should his Honor succeed in the Injunctions he has laid on all the Officers and Ministers of the Court to disregard the Judgement of four of the Judges in preference to his own single opinion. if any of the Books of Jurisprudence or any of the maxims of the Law alluded to by His Honor will authorize His Honor in this Attempt. The Assistant Judges will expect very explicit authorities in support thereof before they can possibly concur with the Chief Justice. or consent to exonerate any of the Officers of this Court from the obligation of obeying the orders of the Courts, always heretofore understood to be the majority of the Bench present.

The Reasons read by Mr. Lowndes in open Court on the 1st day of April last on the part of himself and the other Assistant Judges. for the purpose of opening the Courts but were not then delivered to the Court to be recorded till this sitting of the Court. that he now delivered them in for that purpose

(Jordan)

Jordan a Law on Motion for Judgement

It is a very unusual and extraordinary thing for the Court to hesitate one moment on a Motion for Judgement where all the proceedings have been regularly and properly Conducted, and where the defendants attorney, whose duty it is to see that they have been so consents and agrees to the Judgement passing. The occasion then for this obstruction to the usual and general practice of the Court is now to be considered and whether there is any cause existing sufficient to justify the refusal of the Motion, which has ever been looked upon, not only as a Motion of Course but as a matter of Right.

It has been objected by M^r Attorney General in opposition to the Motion, that the Stamp Act requires that Judgements should be entered upon Stamp Paper, that the Act calls upon the Judges to Act in agreeable to that Law, and being a Public the Court are obliged to take notice of it. That the act was properly noticed to the Court by the Governor. These then are the reasons it is to be presumed that has influenced the Court, to delay and postpone doing any business, or issuing any process since the first day of November last, the day the Act took its commencement. The Stamp Act does certainly among other things require, that for every Skin, or piece of Vellum or parchment or Sheet or piece of paper on which shall be ingrossed written or printed any Judgement, Decree Sentence or dismission or any Record of nisi Prius or Toties in any Court within the Colonies and plantations, there shall be raised Levied Collected and paid
(unto)

unto His Majesty a Stamp duty of four Shillings. And another in section of the Act declares that if any person or persons shall sign ingross, write, print, or sell or expose to sale, or caused to be signed ingrossed written printed or sold or exposed to sale in any of the ^od Colonies or plantations or in any other part of His Maj^{ty} dominions any matter or thing for which the Vellum parchment or paper is hereby charged to pay any duty, before the same shall be marked or stamped with the Marks or Stamps to be provided as aforesaid or upon which there shall not be some stamp or mark resembling the same or shall sign Ingross write print or sell or expose to sale or cause to be signed Ingrossed written printed or sold or exposed to sale any matter or thing upon any Vellum parchment or paper that shall be marked or stamped for any lower duty than the duty by this Act made payable in respect thereof every such person so offending shall for every such offence forfeit the sum of ten pounds. And there is another clause which we shall have occasion to observe upon by & by which declares that no matter or thing chargeable with a Stamp Duty shall be evidence unless the same be marked or stamped in pursuance of the Act. In Answer to the objections urged by M^r Attorney, the Gentlemen who spoke in support of the Motion for Judgement, used several arguments and produced a variety of cases to shew, that cases of necessity are excepted out of Acts of parliament, That the Law does not require impossibilities, and will excuse where there is an Impossibility of doing what is required. That the

(Stamp)

Stamp distributor has forsaken his Office and that consequently no Stamp paper is to be had and no provision made in the Law in case of such a Contingency that therefore the Law will not punish the innocent for the default or neglect of the Officers That the Great Charter of English Liberties forbids that Justice be delayed or denied and the fatal consequences that would ensue should it be in the power of any Inferior Officer by his neglect or omission of duty to obstruct the administration of Justice That the Kings Representative the Governor has certified under his hand and Seal that no Stamp paper is to be had nor has the Act been properly Authenticated, That even the Laws of God yield and give in place to necessity That the impossibility of performing Contracts excuses the breach of them That the Act gives no relief in case the distributor does not act in his Office and many have been appointed without their knowledge or Consent, that it is one and the same thing in respect to the consequence whether any distributor had been at all appointed as being appointed refuse to act. That it is a reproach to the Parliament to suppose they intended the Subjects in America should be distressed for the fault of any Officer, and the great Inconveniencies flowing from so long an Interruption of Justice - These are we think the general heads of the Arguments made use of by the several Gent^l of the Bar who spoke in support of the Motion for Judgement notwithstanding the Stamp Act, and the Court took till to day to give their Opinion.

We cannot better recapitulate what has been said upon this occasion, and shew the reasons upon which the Gentlemen built

(then)

their arguments then by extracting from the case of Teniger versus Jogassa
 in Plowdens Reports such parts as are apposite and pertinent to the present
 subject. That in our Law and all other Laws there are some things, that it
 happen which may not be prevented by foresight nor by any diligence or
 possible means be eschewed and avoided, and when any such thing it
 happens to a man the Law will not punish him for it, for the Law will
 not punish any man for his own default, for if the Law should punish
 a man for an accident which by no foresight diligence or possibility would
 be avoided it would be utterly against reason. The effusion of Blood &
 killing a man are prohibited by Common Law yet every Man in his
 own defence may kill another. So by common custom of the Realm it
 Hosts shall be charged for the Goods of their Guests lost or stolen out of
 their house yet if their House be broken by the Kings Enemies and
 the Goods stolen from thence, they shall not be chargeable. Like reason
 will dispense with Statute Laws. The Statute of Marlbridge prohibits
 distresses from being driven out of one County into another yet it is
 held that when the Abbess of Milton had a Manor in one County she
 might carry a distress taken in another County in land holden of
 the said Manor into the same County where the Manor was not
 withstanding the Statute is in the Negative and this in respect
 of the Inconvenience and absurdity that would otherwise follow. So
 we see some cases shall be construed contrary to Statutes, contrary to Custom &
 contrary to the ordinary Course of the Common Law & this for the necessity of the
 matter and therefore reason maintains that such persons as do so shall not
 (be)

be wrong doers When Laws or Statutes are made there are certain things which
 are exempted & excepted out of the provision of the same by the laws of reason
 altho they are not expressly excepted, as the breaking of prison is felony in
 the prisoner by the 1st Edw^d 2 yet if the prison be on fire and they who are
 in break the prison to save their lives this shall be excused by the Law
 of Reason, yet the words of the Statute are against it. So Jurors who
 were sworn upon an issue, for fear of a great tempest departed and dis-
 persed themselves and it was held that they should not be amerced &
 that their Verdict afterwards was good, in regard of the necessity of the
 occasion, but otherwise they should have been grievously punished
 The Ancient Fathers of the Law construed such Statutes according to
 Equity and reason, altho the Words did not allow of it, but seemed
 against it. So that in all Statutes there are some private cases excep-
 ted out of the General provision by Equity of Reason, in avoidance of
 greater mischief In every Law there are some things which when they
 happen a man may break the Words of the Law, therefore the Words of
 the Law of nature, of the Law of the Realm, and of other Realms, and of
 the Law of God also will yield and give way to some Act and things
 done against the Words of the same Laws And that is where the words
 of them are broken to avoid greater inconveniencies or thro necessity or
 by Compulsion or Involuntary Ignorance. That necessity shall be good
 excuse in all Laws & that all Laws give place to necessity, for it is a com-
 mon proverb that Necessity has no Law Also the Law of God gives
 place to necessity and may be broken without offence to God
 (and)

and therefore in the old Law it was forbidden by the Law of God to eat the Sacred Bread yet it appears that David thro necessity of Hunger eat the Bread and did not break the Law altho he brake the words of the Law as Christ himself declares in the Gospel because he did it for necessity so the Apostles of Christ for necessity of Hunger plucked the Ears of Corn of other persons and eat them and altho they brake the words of the Holy Scripture which forbade them to eat other mens Goods without the Will of the owner, yet they did not offend thereby, from which cases we see the Law of Man, as well as of God yield and give place to Necessity. Thus far the doctrine of necessity is insisted upon in the case of Reniger and Jogassa many other cases may be added of the like import to shew that under particular Circumstances necessity excuses from a Rigid observance of the Law. If a Fire happen in a Street a person may justify the putting down a Wall or House of another person to prevent its spreading And when several persons are in danger of drowning one to save his Life may thrust another from the Boatside and these for the necessity of the Cases. Cited by one of the Gentlemen in his Arguments. So if A assaults B so fiercely that B cannot save his life if he give back or if in the Assault B fall to the ground, whereby he cannot fly in such case if B kills A it is ~~sed~~ ^{se} defendendo the party assaulted shall by the favorable interpretation of the Law have the advantage of this necessity to be interpreted as a flight to give him the advantage of ^{se} defendendo when the necessity put upon him by the Assault makes his flight impossible, not that the Law extenuates this necessity to be a flight

(But)

But the party not having opportunity of saying the Law does not require
 it of him but excuse him in the same manner as if he was freed. Also it
 is not lawful to assist the Kings enemies with money or provisions for
 it is an adhering to the Kings Enemies. and so Treason within the
 letter of the Statute of 25 Edw. 3rd but yet if the Kings Enemies come
 into a Country with a power too strong for the Country to resist. and
 will plunder the Country unless a composition be made with them
 such a Ransoming of themselves is so far from Treason that it has
 been allowed as lawful 1st in respect of the extreme necessity 2^{dly}
 because it is less detrimental to the Country and a less supply to
 the enemy 1 N. P. C. 482 and a number of other cases might if neces-
 sary be produced to the same effect. but these are sufficient to prove
 the general proposition and it remains only to be considered. how
 far these cases Correspond with. and are applicable to the present
 Question Viz! Whether notwithstanding the Stamp Act requires that
 Judgements should be entered upon Stamp paper. they may in regard
 to our present Circumstances be done without- It is a fact of public
 Notoriety that no Stamp paper is to be had in this Province & the Governors
 Certificate under his Seal and Sign Manual produced in Court confirms
 it. if it needed any proof. The Stamp act therefore in the nature of things can-
 not be complied with for want of Stamp paper Whatever cause this may be owing to
 the Effect and Consequence are the same if no business is to be done without
 Stamp paper And it is absolutely impossible for the Court to procure Stamp paper
 the inference is that the Stamp Act in such an Exigency would oblige the Courts to
 be

10/53
be shut up, all business to be remitted and the Administration of Law and Justice to be suspended, can it be presumed that the parli^t meant any such thing, or is there one word in the Act from the first to the last page of it, that gives the least countenance to such an Interpretation could the parliament intend by this Law to abrogate & repeal all precedent Acts of parliament to unhinge the Constitution of the Colonies to unloose the Hands of Violence and oppression to introduce Anarchy & Confusion amongst us, and to reduce us to a state of outlawry, for to be without Law, and to want the means of dispensing the Law is one and the same thing, yet all these consequences unavoidably result from the position that no business can be done at all events without Stamp paper, and would be the natural Effects of shutting up the Kings Courts.

The necessity of the thing therefore, the Law of Reason the Preservation and security of the Province require that such a Construction should be put upon the Act as will prevent such Complicated Evils and excuse even the breaking of the words of the Act for the avoidance of so many and great mischiefs. We have in the present case not only the necessity of the thing to excuse, but the impossibility also of complying with the Act, no power whatever can oblige to impossibilities and a Law which enjoins a thing impossible to be performed is repugnant and against reason and Common Right my Lord Coke says is void.

What greater Necessity can offer itself for relaxing the words of a Statute than that they would introduce such a train of Evils. What Necessity can operate more strongly than that which reduces a whole
(Community)

Community to such a state of Insecurity and deprives them of the protection of the Laws. That necessity can urge the Court more forcibly than that which would oblige them contrary to the Laws, contrary to their oaths to deny and delay Justice. If then things for necessity's sake and to prevent a failure of Justice are as my Lord Coke says excepted out of Statutes, the present case ought most certainly to be deemed so. necessity and law require that the Courts should be open that the Subject may resort thereto for Justice. The Stamp act says nothing to the contrary, only requires under certain penalties that the paper be used on several Occasions should be Stamp paper and pay a certain duty to the Crown, no Stamp paper being then to be had. the non-compliance with the act in this particular, is to be imputed to necessity and the avoidance of infinitely greater mischief.

It appears then from the Reason and Equity of the Law in the several cases enumerated, applied to the present case, that tho' the Words of the Stamp act did authorize a Construction that the Courts of Law, should be shut up, that even such case the Words may be broken, for necessity's sake & in avoidance of a greater mischief. But the words of the act do by no means infer such to have been the intention of Parliament a Law of such a tendency and productive of such a change and subversive of the established Principles and basis of the Constitution could not be admitted by Implication or Intendment, and nothing less than clear positive and express words can justify an opinion that the Parliament had any such thing in view. The act taken in the most rigorous sense does not absolutely prohibit the using of unstamped paper for

for any of the purposes enumerated in the act neither does it (except in one particular case) make any unstamped paper so used void, as will be shown more fully hereafter.

It is evident from the act itself that the obligation to use the Stamp paper depends upon and expressly refers to a previous Condition to be performed by the Commissioners of the Stamp duty, and the penal clause of the act must be taken altogether as connected with, and having Relation to that previous Condition (Act page 29). It is indeed altogether superfluous and unnecessary to investigate any other reasons for excusing the non-compliance with this Act for it would be the greatest absurdity, and contrary to the clearest principles of reason and Law that any man should be punished for not doing a thing, the doing of which depended on the Act and Concurrence of another person whether that Person would or would not enable him to do the thing required. for it is implied in the very Idea of Obedience that the thing required is not only possible but reasonable - The Cause then of not using Stamp paper, being owing to the fault of the Commissioners or those whom they have appointed to distribute them, falls within the reason of the Law in the following Cases - In debt for a House sold the defendant said that it was agreed between the Plaintiff and himself that the Plaintiff should pull down the said House at his own Cost and should remove it to such a place and that then he should pay plaintiff the said sum and said that he was always ready to have paid the said sum, if the Plaintiff had removed it. And this was adjudged a good case, inasmuch as the Contract was entire, and was not executed on the part of the Pl^t and
(also)

also the defendant could not compel the Plaintiff to pull it down and remove it. If on grants or promises to give on marriage with his daughter so much money as I S shall award it is held that before I S hath awarded and appointed it the party who has married the daughter shall not have remedy for any money. That if one leases his land to A for so many years as I S shall name A may not enter into the lands before I S hath named the number of years. for perhaps I S will never name any years and then he shall never have any interest in the Land. If the condition of an obligation be that the obligor shall make all the Linen the obligee shall wear during his Life the obligor must deliver to the obligor the cloth of which it is to be made. So if a tailor is bound or promises to make a suit of clothes the obligor ought to deliver to him the cloth. If a man be bound in L20 to pay L10 to such person as the obligee shall name by His last Will and afterwards the obligee names no person by His Will the obligor is not bound to pay it to his Executors because the condition hath reference to his nomination. If the condition of an obligation be to pay all such Costs as shall be taxed by two Arbitrators by the obligee and obligor to be chosen the obligor must choose an Arbitrator before he can shew any fault in the obligor. By the condition of an obligation a Master is bound to make his Appurtenant free on his Request at the end of Seven Years and in debt on this obligation the Master pleads that he was not requested and it was held that in this case the request was material being part of the condition. If a man covenants to build a House before such a day after the plague is there before the day and shall continue there till after the (day)

day this shall excuse him from the breach of the Covenant for the Law will not compel a man to venture his life for it but he may do it after. If A leases to B for years upon condition that if B pay money to A or his Heirs at a day. That B shall have the Fee and before the day A is attainted of Treason and executed. Now though the condition became impossible by the act and offence of A yet B shall not have a fee. because a precedent Condition to encrease an Estate must be performed and if it becomes impossible no Estate shall rise.

These case evince that where there is a previous Condition either express or Implied, that previous condition must be first performed before a subsequent one dependant upon it can have any operation, and the words of a condition ought to be as strictly performed as the words of any penal Statute now as there is the same Reason in the present case, so there is the same Law. The Stamp Act makes the obligation to use the Stamp paper expressly dependant upon the contingency of their being first provided, and has a plain and clear reference to that Circumstance of the Officers duty. And until that is done the obligation to use them cannot bind for as in the case of the person was to make the Linnen of the Tayler who was to make the Suit of Cloths there were not obligell thereto until the Linnen & Cloth were furnished so neither under the Stamp Act can any one be obliged to use Stamp paper until there is some person who will provide it.

We will now consider the force and extent of the Clause which seems to take away the Evidence and of any paper not properly stamped a preamble to the directions of the Act - The Clause
relative

relative thereto runs thus (vide page 30) This clause also necessarily supposes that the Colonies have been from time to time sufficiently furnished with Vellum, parchments paper stamped or marked with the respective duties agreeable to the directions given to the Commissioners in a preceding Clause, and that the persons having occasion to use them may procure the same from the proper Officer appointed to distribute them. It does not go so far (even if Stamp paper were to be had) as to make the matter or thing, which by the Act is chargeable with a Stamp Duty absolutely void for not being stamped. It only suspends or postpones the efficacy and evidence of them which at any time afterwards may be effectually restored on complying with certain Conditions required and enjoined by the next proceeding Clause, which being performed the Deed, Instrument, Matter or Thing (tho originally done without Stamp paper) recovers its full force Validity and effect as Effectually as if the proper Stamps had been impressed thereon at the time of the Signing, Sealing or other Execution or Entry or Intendment thereof (Page 31) Nothing can be clearer than that the Parliam^t never entertained the least Idea of making all Transactions that required Stamp paper void for want of Stamp paper or of prohibiting absolutely in any situation the use of unstamped paper, had such been their Intention, the proviso would never have been inserted as being directly repugnant and contradictory to their purpose; By the proviso then it is evident that the Parli^t foresaw that many cases might occur, where thro Accident Neglect, Inadvertance, Ignorance or some other cause the several papers required to be Stamped might want that formality, and therefore their Wisdom suggested a Remedy that the Effect of such paper might not be

be lost, and that the party interested might have it in his power to cure the defect. If then a defect in any Deed, Instrument, matter or thing, happening thro a man's own default may be cured as it most certainly may by virtue of the proviso of^d sure no good reason can be given why the same benefit should not be extended to cases where a man errs (if it can be called so) through absolute necessity. The manifest intention of the Stamp act is to secure the payment of the duty not to make void the Making. The words of the Act are general, all matters and things, which are subject to a Stamp duty are also within the proviso whether they be private transactions between man & man or relative to Public Offices or Judicial proceedings, the Law makes no distinction and therefore it would seem that process or any other transactions in a Court of Law may be cured of any defect owing to the want of Stamp paper as well as any deed or other Instrument. Now as it is a Rule in Law that all penal Statutes are to be taken strictly and not extended by Equity to the prejudice of those upon whom the Penalty is inflicted, but shall be taken favorably for them. It would be contrary to that Rule and the Equitable and genuine scope of the Act if all persons were not allowed the full extent and benefit of the proviso in every possible case which might occur. And as the Law gives the right upon payment of the penalty and double duty to any man to authenticate what might before be defective under the Act and no time is limited when he is obliged to do this, Natural Justice require, under the present Circumstances of necessity that he should not be prevented from availing himself of that future benefit whenever it is in his power.

It should have been observed before that Mr. Allen^d Gen^l suggested that the cases cited in support of the doctrine of necessity refers to a legal necessity. It is a certainty where a necessity is the Effect of a mans own voluntary Act. it will not excuse, As in the case of the Prisoner who breaks out of Goal when the Goal is on Fire. he shall be excused, but if he himself set the Goal on Fire he shall not. But it cannot be supposed in the present case and ought not to be presumed that the Suitors of this Court are Instrumental in causing the necessity which has been so prejudicial to themselves. besides Impossibilities let them come from what cause they will are still Impossibilities And the present occasion which makes the Impossibility of procuring Stamp paper. is as much to be attributed to the Act of God, as if the Ship which brought them into the province had been cast away in a Storm for nothing less than his immediate and irresistible Influence could have as it were in a moment united all America and made them as the Heart of one Man. The end of the Act which is to raise a Revenue will not and cannot be answered by shutting up the Courts of Justice. so that this expedient cannot be said to be a compliance with the Law not being the object of it but rather a circumvention of it, and has a manifest tendency to elude the acts. for the Judges are called upon in the several Courts to make such orders, and do such other matters and things. for the better securing of the duties, as shall be lawfully or reasonably desired. So that the sitting of the Courts are absolutely necessary to give Effect to the Act and Assistance to the person who shall be appointed to attend in every
(Court)

Court agreeable to the directions thereof to secure the said duties. Such a
 Construction of the Act then as will necessarily involve in it a necessity
 of shutting up the Courts must be absurd and ridiculous. because it would
 be turning the Act against itself and making those very means which
 it has appointed to assist its execution subservient to the purpose of
 defeating it for without Courts it will be impossible for this part of the Act
 at least to have effect. The Courts of Law to every Civil purpose has been
 shut up full two Months this has not produced the least probability
 of assisting the Executⁿ of the Stamp Act. The Obstacles to the pro-
 curing of Stamp paper still exists the Misfortunes of the Province
 increase the necessity of Individuals call loudly for Redress. The
 Example of the Mother Country at two Memorable periods immedia-
 tely succeeding the death of Edward the Sixth and Charles the First
 shew the sense of the Nation that no conjuncture should put a stop
 to the Administration of Laws or Interrupt the course of Justice, &
 altho' it was but a few days before Queen Mary was peaceably settled
 on her Throne. yet the business of those few days which had been
 transacted in the name of Lady Jane Grey taking upon herself the
 Title of Queen. were allowed of and Confirmed by Parliament. And
 everybody knows what diversity of Forms and Title were introduced
 into the Courts of Law and Judicial proceedings until the
 Restoration of Charles the Second. unknown to the Constitution and
 repugnant to the Genius of the Laws- and yet these also were
 confirmed by Parliament. these Instances shew that it is more
 (eligible)

eligible to overleap even than to be in the wretched situation of a State of outlawry - Deplorable must be the State of a Country where the Laws are no protection or Guard for property where disorder and confusion, holds the Reins, And in a trading Country as this is the evil is proportionately greater, as the occasion is more indispensable, in vain do we open our mouths, in vain expect to follow our Merchandise, and pursue our Commerce for while that vigilant watchman the Law, which should guard our City is bound and fettered, danger from all Quarters will assail us And it may as reasonably be expected to preserve a due Circulation of the Blood in the extreme parts of a Mans body when there is a total Stagnation at the Heart as to expect peace order or safety in a community when the natural Current of Justice is obstructed.

Besides this being a Suit instituted before the time the Act commenced and all the proceedings leading to Judgement having been previously carried on it would seem that an Act made *Ex post Facto* should not be construed or strained so as to deprive the party of the Benefit he had as the Law stood when he brought his Action - And the Case of *Silmore and the Executors of Shooter* (Second Mod. 310) seems to be in point the plaintiff recovered on a promise made before the Statute of Frauds although his Action was brought afterwards. And that Act is express That no Action shall be brought to charge any person, upon any agreement made upon Consideration of Marriage, unless the Agreement upon which Action shall be brought or some Memorandum or note thereof shall be in Writing and Signed,

(and)

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And the Court said it cannot be presumed that the Act was to have a retrospect. so as to take away a right of action. to which the plaintiff was entitled before the Act commenced And upon this principle a judgement was given many years ago. by as able a Judge as ever sat on this Bench M^r Chief Justice Lea, a Person had been arrested for Debt and had petitioned for the Benefit of the Insolvent. before the time was expired that he could be admitted - another Act of Assembly passed requiring certain other Terms and Considerations to be performed by every other person thereafter to be admitted to the Benefit of the Act. And repealed all former Acts. relating to this Subject. and no provision was made or exceptions as to the person who had petitioned under the former Acts - Yet the Chief Justice was of opinion that the Act should not be construed as having Retrospect to such persons as had applied under the former Acts - And admitted the person to swear off upon the terms of the Act he had petitioned under. although all the time they were absolutely repealed and declared null and void.

Upon the whole; seeing that some things, are for Necessity's sake and the avoidance of greater mischiefs, excepted out of the Statutes. That the Laws are so excellently fitted to the Exigencies and Conveniencies of Government, and full of Reason that Impossibilities are not required. That Judges do sometimes expound the Words Contrary to the Text in order to make them agree with all Reason and Equity That it is
(absolutely)

16-21 33
absolutely necessary to the well being of Society that Justice should be administered in the Courts of Law - That it is impossible to procure Stamp paper. That the Parliament did not intend for the want thereof to make void the several matters required to be Stamped That the proviso in the Act admits that such matters may be done without Stamp paper and provides a Remedy in such cases. That Judicial proceedings are within the very letter and benefit of the proviso as well as any other Transactions. That a discontinuance of process and a shutting up of the Courts of Law. is by no means a Compliance with the Stamp Act or authorized by it. or in any wise instrumental to the Saving effect to it for these Reasons and others which might be deduced. The Assistant Judges are unanimously of the Opinion that Judgement might be entered for the Plaintiff agreeable to the Motion in the usual manner as has heretofore been done. no Stamp paper being to be had - And on consideration of the Petition of the several persons presented to this Court the Assistant Judges are also unanimously of opinion that the process of this Court be issued out in the usual manner to any person who shall require & apply for the same that there may be no longer a complaint that Justice is either delayed or denied. It may not be amiss to observe a little upon what M^r Attorney said that this Act is a public Act and being properly noticed to the Court the Judges are obliged to take notice of it. the Assistant Judges have had no occasion to enter into a discussion of these points But it may be observed in General that there seems to be an absolute necessity for some regular and

22/65-
and Reform in this particular - nothing can be more just & reasonable than that the people who are to be bound by Laws, should have the best security and evidence the nature of the thing will admit of that these Laws which it is expected they should submit to are really certainly and truly genuine Laws.

The vague uncertain and precarious of introducing and promulgating the Laws of England among us, upon no better evidence, than that they are said to be printed by the Kings printer (which may or may not be a fact) are liable to too many striking objections, not to the subject. The Judges in England by their attendance in Parliament and by the Recourse that may be had to the Roll may easily detect any mistake or error in a printed copy but in these remote regions of America where there is no possibility of coming at the original a mistake or design may involve in the utmost distress. Lord Ch. Justice Hale takes notice in his pleas of the Crown (1 Book fo 260) of a variance between the Parliament Roll and a Printed Statute which had occasioned some mistakes in Judgements given for High Treason, if printed Copies then have been erroneous and have misguided the Judges in such important matters in the Courts at home, can it be wondered at if their Authority should not be implicitly acquiesced in, here, or that it should be thought expedient they should be authenticated.

Charles Town 1st April 1766

Robert Fringle Benjamin Smith
Law^r Leonard D. Doyley

(M^r)

All^d Justice Lowndes then further proceeded to pronounce the Judgement of
of the Court upon the Clerk's late conduct which was ordered to be recorded and is
as follows Viz^t The Court have taken into consideration the very extraordinary
and unprecedented behaviour of the Clerk on the 1st day of April last in repeat-
edly refusing and obstinately persisting in his refusal to obey the reiterated
Order of the Court to enter up Judgement in the cause Jordan against Law
which the Court had after hearing Arguments upon mature deliberation, ad-
judged should be done. This unexampled and daring violation of the
known duty of the Clerk in open Contempt and defiance of the Authority of
the Court is considered as much aggravated by the presumptuous pretences
which the Clerk set up in justification of his disobedience Viz^t That the Stamp
Act did not allow him to pay obedience to the directions of the Court, thereby
endeavouring to wrest from the Court (to whom of right it appertains to construe
the Laws) their proper Jurisdiction and to assume and arrogate to himself
a power to supersede and control their determinations to the total Inversion
of all Law, Order, decency & decorum not considering that should an Act of Par-
liament release him from the obligation of obeying the Orders of the Court
or give him discretionary power to do so, or not, as their Judgment coincided with
his own, that he would instantly cease to be Clerk, it being inconsistent with
and repugnant to that very Idea of subordination which as a Ministerial Officer
he owes to the Court to be exempt from due obedience to their Authority. The Court
have further considered the Clerk's gross neglect of duty in not issuing the Venue for
summoning a Jury for this present Court as was his bounden duty both by the nature
of his Office & the obligation of his Oath & to which he was particularly enjoined by
(all)

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all the Assistant Judges by reason whereof the whole business of the Court requir^d
a Jury must be delayed and postponed till next August, a time so inconvenient on
account of the excessive heat that little or no business is wont to be done to the great
prejudice and hurt of His Majesty's Subjects the prevention of Justice and in all
probability the total loss of many just demands. In Order therefore to support the
Honor and authority of the Court, to enforce due Obedience and regard to their
Orders and determinations, and to prevent the fatal consequences that will un-
avoidably result from a want of due Subordination and subseroency in
the officers of the Court, and their Neglect of Duty It is Ordered that Douglass Campbell
Esq, the Clerk of the Court for his said Contempt, Contumacy & Neglect of duty do pay
a fine to His Majesty of the sum of £100 proel^a Money, and the same to be paid in
Ten days from this day His Honor the Chief Justice having spoke in the Clerks
justification and declared his dissent to the Judge of the Court quitted the Bench.
The Clerk being asked by the Court if he had continued to use the Seal which had
been put into his hands on Tuesday last by Mr Justice Pringle, and whether or not
His Honor the Ch. Jus^{ts} had consented to do business, and to the 1st Question having
answered in the affirmatⁿ & to the second that his Honor still declined doing Busi-
ness, having this very morn^g refused either to sign or Seal a Writ of Exce^mus
prostatem for which he had been applied to by Mr Rutledge the Clerk was then
ordered to continue the use of the said Seal which had been put into
his hands by Mr Justice Pringle and the same was declared to be the
Seal of the Court.

The Court after hearing several Motions adjourned to Thursday
the 29th of May at 10 o'clock in the forenoon

29th May 1766

Present

The Chief Justice.

M^r Justice Lowndes

M^r Justice Smith

M^r Justice Doyley

The Names of the Jurors to serve at a Court of Common Pleas to be holden at Charles Town on the Second Tuesday in August next. were being drawn in the presence of the Chief Justice Public Treasurer and Coroner for Berkeley County. pursuant to the Jury Law and their names were entered

After which a Motion was made by M^r Manigault on the Petition of John Izard praying a M^r of Partition for a division of Lands between the parties therein mentioned. The Chief Justice whereupon observed that tho' he was inclined to believe the Stamp Act was repealed. yet as such Repeal was not yet Arrived or properly notified to the Court he could not consistently with his former conduct since the Stamp Act took place sit there to hear and determine upon Motions, and then he left the Bench after which other Business was done by the Assistant Judges

The Clerk having humbly begged leave to present a petⁿ to the Court the same was ordered to be read and was as follows. To M^r J.

S^o Carolina To the Hon Chas Skinner. Rob^t Pringle. Jas^o Lowndes Ben^t Smith and Dan^l Doyley Esq^r Ass^t Judges & Justices of His Maj^{ty} Court of Com^o Pleas.

The Petition of Doug^l Campbell Clerk of the s^d Ct. Humbly Sheweth That Your Pet^r is unfeignedly sorry for his having incurred the censure & displeasure of this
(Honorable)

Honorable Court, than which he humbly begs leave to assure your Honors nothing which hath happened to him through the whole Course of a life pretty far advanced has occasioned him more real concern and uneasiness

That Your Petitioner on Account of the heavy loss which he hath sustained, by means of the long continued stop which has been put to his Business hath not had it in his power to pay the Fine which was set upon him by this Honorable Court at the last sitting thereof which failure he humbly hopes will not be construed into any intended Contempt or disrespect and prays that in consideration of the late favorable turn which American Affairs have most happily taken Your Honors will be pleased to regard his Circumstances with an Eye of Tenderness and Compassion And your Petitioner in duty bound will ever pray
Charles Town 29th May 1766 L Campbell. C. C. Ps

The Court having taken the said Petition into consideration and being of opinion that the Clerk's late conduct proceeded rather from an Error in Judgement, than any Contempt or want of respect for the Authority of the Court, the Fine which had been set upon him at the last sitting thereof was reduced to Ten pounds Proclamation Money. It is to be noted that the Ch: Justice in the evening of the 8th of July following took occasion to call in at the Clerk's Office and desiring to see the Court Book to take some Notes of the Entries about the transactions relative to the Stamp Act, which he was about sending home & upon looking over the Book he saw an Entry of Record of the above petition which was the first knowledge he had thereof it was a matter of great surprise to him, w^{ch} made him ask wherefore
(His)

his name was made use of in the Address of that Petition to the Judges and that he was not made acquainted therewith & then desired to see the original Petition which was brought to him. He then observed that his name and address as Chief. was interlined to which the Clerk replied that the Petition was only intended for and directed to the Assistant Judges w^{ch} he had presented to them after the Chief Justice had quit his seat when they were entering on Business & that upon reading the Petition the Judges directed him to interline the Petition with the name of the Chief Justice. The Ch. Justice then told the Clerk he had been Guilty of a base and shameful desertion of the Cause he seemed to defend so well, also of the Trust reposed in him as the Kings Officer likewise of the Chief Justice who supported him thro^{ut} it, and also of the Lieut Ser^t who interposed therein for his Protection by respiting the time for payment of the Fine till the Matter could be laid before the Ministry and their Answer had thereto - That it shewed a suspicion of them also (the Ministry) that they would not relieve him nor lessen the Fine - That this also seemed to lay a foundation for future trouble in the Court as it tends to the raising the Authority of the Assist^{ts} Judges over that of the Chief, making him but a Cypher and leads to an independence of him in all Legal Matters thereby establishing as it were the whole Judicial power in themselves and sapping and indeed annihilating that of the Crown.

The Chief Justice told the Clerk he thought him to be a very bad man, a very liar of Gray, and that he did not see how he could answer to the Ministry for acting such a part to w^{ch} he replied he had already wrote home about it. And the Chief Justice answered he would do so too.

(The)

23/7/1
The Court met according to Adjournment

1st July 1766

Present

The Chief Justice

M^r Justice Tringle M^r Justice Lowndes

M^r Justice Smith M^r Justice Boyley

M^r Justice Smith left the Bench - The Chief Justice observing that the Fracktioners of the Law were about moving upon matters that had the original foundation of their proceedings on the false Writs issued by the Assistant Judges, and suspecting that any Order made on those Writs in his presence, whilst sitting in Judgement, might be thought to cure the wrong proceedings before taken, he declared his dissent, as follows - I do not choose at present to assign any Reason wherefore I retain the Seal of this Court, wherein I have the honor to preside in my own Hands. I have reasons abundantly sufficient to justify my conduct in this respect. I am astonished to hear it now said, that the Seal ought to be in the Hands of the Clerk. Surely if any one person has a Right (other than a permissive right) to the Custody of it, it must be him who presides in the Courts to which it belongs, who signs or should sign all process issuing thereout, and whose name alone all such process is or ought to be tested - That I am the person here described I shall presently make appear. In the mean time I must observe that M^r Campbell not long since on account of a little pique between us delivered up the Seal to me, and told me he would
(keep)

keep it no longer. for that it was my business to Seal as well as sign this
Intend to do for the future and accordingly am ready and willing to
affix the Seal to any paper which may require it. That I have a right
to preside in the Court of Common Pleas and Session in this Province I
believe no man will deny the very name of Chief Justice implies as much
my Brethren the Assistant Judges may indeed overrule me in Court a
Majority being against me yet I apprehend that in case of an equal
division on the Bench I have the casting voice.

That I ought to sign all process issuing out of these Courts.
must appear if it be considered that it has been the constant and in-
variable practice in this province till very lately for the Ch. Justice
and no other Judge so to do except in the case of the sickness or the
absence of the Chief Justice. Now that all process ought to be tested
in my name, and in that of no other person will be manifest from
the following consideration. The process of every Court in England
of like Jurisdiction with either of those I preside in, is always
and from the earliest times has been tested in the name of the Chief
if there be a Chief Justice in ex. even if he be sick, or absent
And so incapable of actually presiding in Court and I defy any
Gentleman to produce any one instance from home to the contrary
But I will produce three instances which have happened with-
in my own Observation to prove what I have asserted.

With respect to the Sickness of a Chief Justice during
the sickness which preceded the death of Sir William Lee the
(late)

late Chief Justice of the Kings bench in England the process was attested in his name - after his death till Sir Dudley Ryder took his place, the process was tested in the name of Sir Martin Wright, who was Senior Justice Judge and during the Vacancy President of the Court. So the process was tested in the Name of Sir Dudley Ryder till the very moment of his death, and from that time till the present Lord Mansfield succeeded him, in the name of Sir Thomas Denison, then Sen^r Justice Judge. And lastly when Sir John Willes late Chief Justice of the Common pleas in England lay sick the process of the Court was nevertheless tested in his name, and after his death till Sir Charles Pratt (now Lord Camden) seated himself, in that Court, in the name of M^r Justice Bathurst sen^r Justice Judge, and in effect temporary Chief Justice. Now to instance with respect to absence, The Chief Justice of the Northern Welsh Circuit constantly resides in England except during the great Sessions in Wales, yet all Process of the Courts there bears not in his Name, and should he be obliged to go abroad on account of his health, such process would issue as it now does. In fine so invariably is process at home tested in the name of the Chief, if there be a Chief that I cannot help thinking all process tested in any other name must be erroneous and in this opinion I am by no means singular - A man of no little eminence in the law the late M^r Sergeant Skinner, gave the same opinion under his hand upon a case referred to him by M^r Chief Justice Whitaker of this prov^{ce} which I had copied in the Books of my Office. And now as my Brethren the Assistants here threatened to take and apply to their

(own)

own use. Fees for business they may do in the Courts. let me advise them to be cautious of burning their fingers. for I have the beforementioned Sergeant Skinner to friend in this matter who says (these are his very words) "The fees and perquisites of Office belong absolutely and solely to the Chief Justice. they are annexed to his Office, and should any other person receive the fees due to him, they would be so much money had & received by such person for use of the Chief Justice And the constant practice of the superior Courts here in England, is that tho' the Chief Justice is sick or absent during the whole term, and the other justices do the whole business yet they do not receive or are entitled to any fees or perquisites. And in Wales tho' the Chief Justice be not within the Principality, during the whole great Sessions so that the Business is entirely done by the other Justices, yet all the fees and perquisites are received by, or accounted for to the Ch: Justice Little do I regard the Assurance my Bretheren have given me that I shall not find a Jury in this Province who will allow me fees for business done by them - Should this be true, as I have no reason to believe, I am certain I should have Justice done me elsewhere, perhaps in a manner very disagreeable to them, who would appropriate to themselves what justly and legally belongs to me. I have a word or two more to say and I have done - The Gentlemen Assistants talk of signing Process and affixing their Seals to it. I do not think this of itself, would vitiate the process. It might notwithstanding be regular if tested in my name. But I do hereby protest against every Counsellor, Attorney, and all other persons, testing any process in my name, which shall not be

(signed)

signed by myself and impressed with the well known Seal of the Court, which is now in my possession and which as I before said I am ready and willing to affix to any writings which may require it. And I am resolved in my present opinion, to suspend every Practitioner of the law who dared, to be so bold, as to break thro' the Injunction against them by me publicly declared in this place on the first day of April last to nearly the like Effect. so soon as I have the opinion and orders that I in all likelihood may expect in some time to come

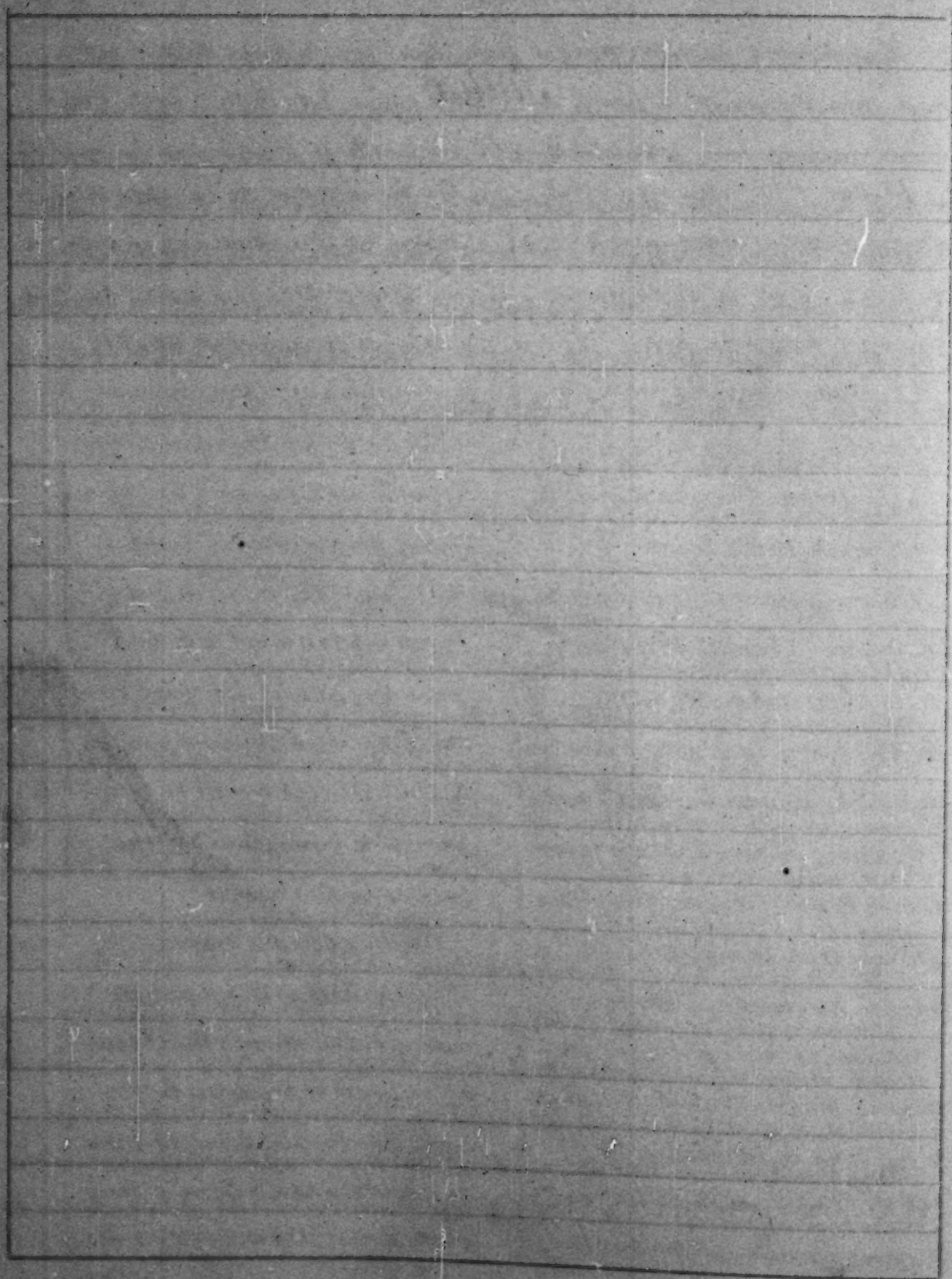
Chas. Skinner

The Chief Justice then delivered the paper he had read (of which the above is a copy) to the Clerk of the Court, and ordered him to enter the same and to file it with the records, whereupon the Assistant Judges immediately opposed it and forbade the Clerk to receive or enter it upon which the Clerk in obedience to their orders returned the paper to the Chief Justice saying the Majority of the Court was against him the Chief, that the Clerk must obey their Order. To which the Chief Justice replied that he would send it to England where he was sure it would meet with Credit, and that the Ministry would take notice of it.

The Assistant Judges then said that as to the suspension of the Attorn^ys mentioned in the paper, they would let the Chief Justice see, that if he did suspend them they would immediately restore them and therefore feared it not. To which the Chief Justice replied, that he believed they would do so, that they would support one another at all events and that he was not surprised at such an answer from them as he expected the like would be given to him

(They)

They observed upon the Caution given them (his Brethren Judges) not to burn their fingers &c to which they replied with a like Caution to the Chief Justice warning him to beware that he did not burn his fingers by accepting of those fees when they should be collected - The Chief Justice answered that he would beware how he did anything other than what was agreeable to his conscience, that it was his business to take care of his own conduct and that if he erred it must be that he thought it was right, that he would take heed to his ways and hoped others would do so too.



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like from them

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of burning their fingers - And
advice the Chief Justice to beware
of burning his own - He replied
that it was his business to take
care of his Conduct and that
if he erred it must be that he
thought he was right

33

(Inclosure) To the Right Honorable William Bull Esq. Lieut. Governor
and Commander in Chief in and over His Majesty's Province
of South Carolina

The Humble Petition of Robert Williams of Charles Town in the
Province aforesaid Gentleman and Thomas Hartley of St. Pauls Parish in
the same Province planter.

Sheweth That your petitioners on the 1st Instant exhibited an Informa-
tion upon oath before Dougal Campbell Esq. Clerk of the Crown. and a
Justice of the Quorum against M^r. Ward Crosthwaite and certain other
persons therein named, for forcibly and violently taking carrying away
Sarah Hartly Spinster an Infant. the Daughter of the Wife of Your Pet-
itioner the said Robert Williams by her former Husband against her
Will and marrying her. she the said Sarah then having a considerable
real and Personal Estate within this Province and also for forcibly and
violently taking and carrying away divers Goods and Chattels from
your Petitioner on the Kings High Road, at the same time putting them
in fear. by presenting loaded Pistols to their Breasts with menaces
and threats. as may more fully appear by the Depositions of Your
Petitioners taken before the said Dougal Campbell Esq. a true Copy
whereof is hereunto annexed That upon the Information so exhibited
by your Petitioners the said Dougal Campbell Esq. issued a special cu-
rrant against the said William Ward Crosthwaite and his accom-
plices for Felony but that before the same could be executed your Pet-
itioners are informed the said William Ward Crosthwaite by M^r.
(Charles)

Charles Pinckney his Council on the 4th Instant moved the honor^{ble}
 Charles Skinner Chief Justice of the said Province to be admitted to bail
 It hereupon the said Chief Justice declining the inspection or perusal of
 the depositions of your Petitioners was pleased to direct the said Charles
 Pinckney to open the nature of the Charge against the s^d Will^m Ward
 Crosthwaite which M^r Pinckney having done the Chief Justice observed
 that as he should regulate his conduct in admitting the said William
 Ward Crosthwaite to Bail by what M^{rs} Crosthwaite should say upon this
 occasion he thought it proper she should be present, and accordingly
 ordered M^{rs} Crosthwaite to be sent for and on her appearing before him
 the Chief Justice asked her many Questions as to the manner of her in-
 having been taken and carried away and whether the same was
 against her Will requiring the said Dougal Campbell at the same
 time to take notice of her answer which the said Dougal Campbell re-
 fused to do, alleging that he attended his Honor in obedience to his
 Command, as Clerk of the Crown, in a Ministerial Capacity, and not
 as a Judicial Officer, upon which the said Chief Justice called upon the
 said Dougal Campbell as a Magistrate and Justice of the Quorum to
 to comply with his requisition intimating that in this Character he
 might even Control or supersede his own Warrant. but the said Dou-
 gal Campbell replying that he conceived he had no such power, the
 offence not being bailable by him as he could not sit in Judgement
 on the Trial of the Offender. M^r Pinckney interposed and acquainted
 the Chief Justice, that he thought the matter was Cognizable before
 (his)

his Honor alone, who thereupon called for a Bible and ordered the s^d Dougal Campbell to tender an Oath to M^{rs} Crosthwaite to answer such Questions as the Chief Justice should ask of her on that occasion and the said Dougal Campbell not immediately acquiescing, the said Charles Pinckney again interposed by representing that the swearing M^{rs} Crosthwaite would be extra judicial and entering prematurely upon the trial of the cause, and that then the Chief Justice admitted the said William Ward Crosthwaite to Bail on a Recognizance for £1000 Proclamation Money, that is to say the s^d Will^m Ward Crosthwaite in £500 and William Williamson and the said Chas Pinckney as his surety in two hundred and fifty pounds each, at the same time superseding the Warrant issued by the said Dougal Campbell as above in so far as it is concerned in the said William Ward Crosthwaite although the said William Ward Crosthwaite had on the 6th day of December last upon the Oath and Complaint of your Petitioner the said Robert Williams been bound over by the said Dougal Campbell to keep the peace in a recognizance of £1200 Proclamation Money, that is to say the said William Ward Crosthwaite himself in £600 and the s^d Will^m Williamson and Charles Pinckney as his surety in £300 each which last mentioned recognizance appeared on the face of the Deposition of your Petitioner to be manifestly forfeited when the former Recognizance was taken by the said Chief Justice. So that as the Recognizance entered into before the said Dougal Campbell was ineffectual to prevent a breach of the peace your petitioners humbly conceive that taken afterwards by the Chief Justice for a less sum could not in reason

(be)

be thought to render the same Person amenable to Justice, when charged with a Felony especially, as it is imagined there would be insuperable difficulties in prosecuting a Suit upon a recognizance in this Province without the aid of a Court of Exchequer a circumstance which the Chief Justice it is presumed could not be unapprised of. Besides your Petitioners apprehend that the said William Williamson could not legally be taken as one of the said William Ward Croothwaite surety in regard he has since the offence was committed openly received the said William Ward Croothwaite and his Wife, and as the manner in which the latter was taken away is so publickly known that it is hardly possible for the said Will^m Williamson to remain uninformed of it he in consequence of Law is Fariops Criminis and by the Statute of the 3rd of Henry 7th Cap. 2. made of force in this Province expressly declared a principal Felon That your Petitioner also apprehends the receiving the declaration or testimony of the Wife as Evidence for the husband whether in order to his Admission to Bail or upon the Trial in a case of this nature is utterly repugnant to the Genius and policy of the English Law which your Petitioners have ever considered as their inevitable Birthright and best inheritance but if they are thus arbitrarily relaxed in the favour of offenders your Petitioners humbly beg leave to represent to your Honor that the power and influence of the Parent or Guardian are insufficient to protect the Child or Orphan from the hand of violence, that the subject is no longer safe in the enjoyment of his life liberty or property and that vice or immorality will eventually triumph over every legal and civil right. let the care of the Legislature be ever

(So)

so vigilant and attentive That inasmuch as your Petitioners can fully
prove the facts above stated with the sanction of your Honors Authority they
humbly entreat your Honor for that purpose to summon before you the S^d
Dougal Campbell together with M^r William Mason and that you will
take the premises into your most serious consideration and make such in-
orders therein as will conduce to the due Execution of the Laws and the
faithful administration of Justice on which the Security and happiness
of your Petitioners and of all his Majestys Subjects in this Community
does so essentially depend And your Petitioner in Gratitude shall
ever pray and so forth

Charles Town 13 Jan^y 1766

Robert Williams

A true Copy exam^d by Jas Simpson C.C

Thomas Hartley

South Carolina

Berkley County

The Examination and Deposition of

Robert Williams of the said County Gentleman taken before me Dougal
Campbell Esq Clerk of the Crown and Peace and one of His Majestys
Justices of the Quorum in the said Province the 1st day of January in
the Year of our Lord 1766 this Deponent being duly sworn on the holy
Evangelist of Almighty God made oath that on the 23rd of December last
past having gone with his Wife and Sarah Hartley his Daughter in
Law from his plantation in Hono in St Pauls Parish to that of Thomas
Hartley named Buckhall in the said parish about Goitlock in the
forenoon he this Deponent proposed to the said Thomas Hartley
(that)

that it being then fair weather they had better all go to Town as it might probably rain the next day, to which proposal the said Hartley agreed, and the accordingly proceeded on their journey in their Chais, in the following order to wit Thomas Hartley and his said sister Sarah in the first Chair the said Deponent his Wife and a Child of the said Thomas on her lap in the second. And the Wife of the said Thomas Hartley and a lusty wench with another of the said Hartley children on her lap in the third Chair together with some spare Horses and two Negroes behind. That in this manner they travelled until they had got about half way between Rantowles Bridge and Ashley Ferry, when on a sudden without the least previous Notice this deponent saw on his right hand William Ward Crosthwaite of Charles Town advancing on horseback, and in an instant Barnard Elliot of St Pauls Parish aforesaid came close to the left side of this Deponents Chair with a Cocked Pistol in each hand and presented one to this Deponents Breast and the other to that of his Wife, at the same time saying, God damn your blood Sir an inch and by God I will blow your brains out. That this Deponent looking forward saw the said Crosthwaite and Benjamin Huger likewise of Charles Town who had just passed him seize the Chair in which were the said Thomas Hartley and his sister Sarah, each of them clapping a cocked pistol to the said Thomas Hartley Breast. That this Deponent turning his Head saw another man near the right Wheel of his Chair whom taking for some Traveller he said to him, Sir you see we are attacked by villains on the Kings Highway pray assist us

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to which he replied Yes Sir, and immediately thereupon seized a long barrelled Gun which was in the Chair between this Deponent and his Wife and their Child and with great violence forced it over the Back of the Chair to the imminent danger of the Childs Life. from the Lock thereof. That the said Barnard Elliot told the man who had taken the Gun out of the Chair, to fire it off and throw it into the ditch, which he accordingly did the ditch being full of water. That this Deponent then saw the said Crosthwaite and Huger struggle to get the said Hartley out of the Chair from his Sister, into which Crosthwaite had jumped and was again pulled out by the said Hartley, but being at last overpowered the said Hartley was at length violently forced out of the Chair. That the man who had taken this Deponents Gun out of the Chair then went and seized the said Thomas Hartley, by his Arms behind and Benjamin Huger and held him by the Wrists while this Deponent saw the said Crosthwaite who had again got in and seated himself in the Chair wherein the said Thomas Hartley rode belonging to this Deponent and drawn by a Horse of the said Hartley, drove off with the said Sarah, as this Deponent verily believes forcibly and against her will as she constantly cried out Murder O' help as long as she was within this Deponents hearing, that whilst this was transacting the said Barnard Elliot kept swearing to this Deponent and his Wife, with his Pistols cocked and presented at their Breast saying that if either of us them moved a hand or offered to come out of the Chair by God he would blow their Brains out and the said Deponents Wife crying as he supposed to take her Snuff Box out of her Pocket was observed

(by)

by the said Elliot. who thereupon swore with great vehemence saying. God damn you Madam you have a Pocket Pistol keep your hand out of it or I will kill you. That the said Deponents wife desired the said Elliot to let one of the Negroes take the Child out of her lap but he absolutely refused swearing as before that nobody should stir. That M^{rs} Williams whilst the Pistol was at her Breast asked the said Elliot if he knew what he was about. who replied yes God damn you Madam Crossheart is my friend I dont care if it cost me ten thousand Pounds. and all the moneyed men in the Province will approve of our Conduct. and stand by us. That this Deponent was violently kept in this manner for about an hour and his wife just recovered from a severe fit of sickness. which had liked to have cost her. her life and the young children almost ready to perish with cold and when he entreated the said Elliot to permit him to carry them to some house to warm them. he was answered with a God damn you no. That this Deponent then told the said Elliot. Juger and the other man whose name he has been since informed is John Miles that he hoped to have the pleasure of seeing them all hanged for that days business. That this Deponent asked the said Elliot and Juger whether or not they had got this Party of their Education in England. as they seemed very expert in it. to which Juger made answer yes. That this Deponent made a representation to the said Elliot that this might make M^{rs} Hartley miscarry to which Elliot answered that he was sorry that she was there but said God damn all the rest. That at length Elliot said that if this Deponent and his Company would turn the two Chairs which
(they)

they had left round and go a Quarter of a mile back again. they
 might then proceed upon their Journey. but the road in which this Depo-
 nent had been violently stopped and so long confined was so narrow and
 having a Ditch full of Water on each side thereof it was impossible to
 turn his Chair without getting into one or the other of them; notwithstan-
 ding which the said Elliot took the said Deponents horse by the Bridle
 and in attempting to turn him round run the Chair into one of the
 Ditches with himself his Wife and the Children in it. the Horse en-
 deavoring in vain to draw it out that thereupon the said Elliot
 clapped his pistol to the Deponents breast bidding him come out which
 he accordingly did together with his Wife and Child. when Elliot disco-
 vering two Pistols in the Bottom of the Chair seized them and fired
 them off and put them into the Water and afterwards with a cocked
 pistol in his hand forced a Negro fellow named Isaac belonging to
 the Deponent to take the said Pistols and the Gun which had also been
 thrown into the Ditch out of the Water and draw the Hints which being
 done the said Elliot put the Hints in his pocket that during this attack
 and confinement two Lads whose names this Deponent has since been
 informed — Smith and Peter Billing were present and desired to take
 notice of what passed. That the said Barnard Elliot and his Party having
 rode off this Deponent and his Company pursued their Journey towards
 the Ferry when having something above a Quarter of a mile they espied
 some Clothes lying out of the Great Road which having gone up to they
 found the said Sarah Hartshup's Scarlet Cardinal much broke lying by
 (itself)

itself, her Muff in one place, her Hat in another, her Supper in another
 and a mans Glove in another which made him suspect that further
 violence had been there offered to the said Sarah Hartley That returning
 to the Broad Road he found at a small distance in a run of Water
 the Horse and Chair which the said Crothwaite had forcibly carried
 off with the said Sarah Hartley as above one of the shafts of the Chair
 being broke and the back Band of the Harness cut asunder so that in this
 condition as it could be of no use to them in their Journey they left the
 Chair where they found it but brought away the Horse and got to
 Ashley Derry in the best manner they could That when this Deponent
 and his company got to the Derry they were informed that none of the
 party which had attacked them had gone over whereupon this Depo-
 nent and his Wife desired M^r Hartley to go to the Rev^d M^r Chas. Martyns
 House and request him not to marry the said Crothwaite to his Sister
 which the said Hartley accordingly did and this Deponent proceeded
 immediately to Charles Turn when M^r Rob Philips and he waited on
 the Clergy for the same purpose who told them that they might have
 saved themselves the trouble for that none of them would do any such
 thing and they were sure M^r Martyn would not That next morning
 this Deponent went again to Ashley Derry where he met M^r Jⁿ Castle
 who acquainted him that about 12 o'clock the preceding evening he met
 the said Barnard Elliot, Benjamin Huger and another man enquiring
 for a Chair and two Horses with a Gentleman and a Lady in it, and
 that he told them he had not seen any such so that it appeared to this
 (deponent)

Deponent that the said Crosthwaite had the said Sarah Hartley a considerable time in the Woods by himself, and this Deponent further saith that on his return to Charles Town he was informed by the said M^r. Martyn that he had married the said Crosthwaite to the said Sarah Hartley on Monday night which induced this Deponent to enquire of Thomas Skottowe Esq. and George Johnston his Deputy whether a licence had been procured for that purpose but was answered by both in the negative and this Deponent saith His Chair as above mentioned had not been returned to him and that by the behaviour of the said Bernard Elliot and his Companions this Deponent was put in fear and had cause to apprehend his life was in danger And this Deponent moreover saith that at the time the aforesaid Sarah Hartley was forcibly and violently taken and carried away in manner as above she had or was legally entitled unto a considerable substance in Lands and Goods

Signed and Sworn before me
the day and Year above written

Robert Williams

D Campbell J.P. (Copy)

South Carolina } The Information & Deposition of
Berkeley County } Thomas Hartley of St Pauls Parish Stone in the
Province aforesaid Planter taken before me Douglas Campbell Esq.
Clerk of the Crown and Peace and one of His Majesty's Justices of
the Quorum in the said Province this 1st day of January in the Year
(of)

1894
of our Lord one thousand seven hundred and sixty six This Deponent
being duly sworn on the Holy Evangelist of Almighty God made oath that on
the 23^d of December last Monday, on his way to Charles Town from his Man-
taken at Stone in company with Robert Williams Sen^r Esq, and Margaret
his Wife, Sarah Hartley Sister to this Deponent, his Wife and two young Chil-
dren in three Chairs opposite to the Back Water of Thomas Fuller Esq, about 3
miles from Ashley Ferry between 11 O'clock in the afternoon he and his
Company were overtaken by William Ward Crothwaite, Benjamin Huger, Bar-
nard Elliot and John Myles, when William Ward Crothwaite and Benjamin
Huger rode alongside the first chair in which were this Deponent and his
sister stopped it by seizing hold of the Reins and jumping off their Horses in
each with a Pistol in their hands which they instantly cocked and clapped
to the Breast of this Deponent, swearing they would shoot him if he made
any resistance Whereupon the said Benjamin Huger came to the right
hand of the Chair on which sat this Deponent, William Ward Crothwaite
continuing on the other side, where was Sarah Hartley this Deponents
sister and Benjamin Huger immediately put one of his hands on a
Gun which this Deponent had in the Chair and with the other he
held a cocked pistol to his Breast and again swore that if he made any
resistance he would blow his brains out That in the meantime the said
William Ward Crothwaite jumped into the Chair saying he was come to
demand some private conversation with Miss Hartley which he swore he
would have hereupon the said Deponent cocked the Gun which he had
in the Chair with his foot and stooping down as if to deliver it to

(Benjamin)

Benjamin Huger turned the Muzzle to the said Croothwaite's breast & with his Thumb pulled the Trigger but the Lock hanging downward the Gun missed fire upon which the said Croothwaite said God damn your blood. Sir Snap a Gun at a man and two loaded Pistols at your Breast? At the same time this Deponent heard his Sister Sarah Hartley say indeed Sir you shall not have any private conversation with me and immediately took hold of this Deponent's left arm That the said Benjamin Huger then jerked the Gun out of the Chair when this Deponent pushed Croothwaite out also that the said Benjamin Huger threw the Gun into the Ditch with Water in it and came and took hold of this Deponent whereupon the said Croothwaite again jumped into the Chair and he pushing and Huger pulling the forced the said Deponent out of the Chair That the said Sarah Hartley this Deponent's Sister kept hold of his Arm as long as she could and until the said Croothwaite wrenched loose her hold when he seated her in the Chair and himself alongside of her and then drove off as fast as he could the said Chair being the property of the said Robert Williams and the Horse belonging to this Deponent The said Sarah Hartley repeatedly crying out Help Murder for God's sake my dear Sister my dear Brother and attempting to jump over the Back of the Chair but she was prevented from so doing by the said Croothwaite who seized and pulled her back again from all which circumstances this Deponent verily believes the said Sarah Hartley was forcibly taken and carried away as above against her will and inclination That at the time of this Deponent being forced out of the Chair he received a Wrench in his ankle which obliged him to apply to a Surgeon. And after he was out the said Miles came
(behind)

behind him and took hold of his Arms and the said Huger coming before
 him seized him by the Wrists in which manner he held him for near an
 hour that once during this time they slackening their hold this deponent
 with his Elbow struck the said Myles in the face and set his nose bleeding
 that this Deponent saw Barnard Elliot standing by Sol^d Williams's Chair
 with a cocked pistol in each hand on the side whereon sat the s^d Marg^t
 Williams with one of this Deponents children in her lap and that the
 said Elliot kept continually swearing God damn your blood I will blow
 your Brains out and particularly objected to the said Marg^t Williams
 putting her hand in her pocket pretending she might possibly have
 pistols therein that during the time that this Deponent was confined
 as aforesaid a Chair with two Horses drove by a Negro boy past
 when the said Elliot called to the Boy God damn your blood make
 haste along after Oosthwaite that this deponent when he was attacked
 in manner as above had a new Chair Whip that cost him 35^s w^{ch}
 he believes the said Oosthwaite took when he drove off with the said
 Sarah Hartley that while the deponent and his Company was kept
 confined as aforesaid the said Margaret Williams desired leave to
 proceed on the Journey or to go to some House on account of the two
 young children one of which was a little better than two months old
 and she herself just come out of a violent fit of sickness which request
 was with an oath refused by the said Barnard Elliot that during this
 whole transaction there were two Lads standing within view the one
 named Peter Billing and the other - Smith who saw everything
 (that)

that passed, that after this deponent and his Company had been detained for near an hour as aforesaid the said Barnard Elliot to the best of his remembrance told them that if they would turn their Chairs and go a quarter of a mile back they might then proceed on their Journey whereupon on turning the Chairs the said Elliot put the wheel of the said Rob^t Williams Chair into a ditch full of Water out of which the Horses were not able to draw it that the said Barnard Elliot insisted on the said Rob^t Williams and his Wife to continue in the Chair until he found it was impossible for the Horses to draw them out of the ditch in when he permitted them to alight and keeping a Pistol to the said Rob^t Williams breast he discovered a Case of Pistols in the Bottom of the Chair which he took out and fired off that the said Barnard Elliot thereupon ordered a Negro of the said Rob^t Williams to take the Gun out of the Ditch water and pull out the Hints and on the Negro's refusing he said God damn your blood if you dont I will shoot you on which threat the Negro said give me a Knife and I will pull out the Hints but the s^d Elliot ordered him to turn them round till they were loose and so take them out that thereupon the fellow put his hand in his pocket for a Knife as this Deponent believes to take out the Hint upon which the s^d Elliot run up to him and said God damn my blood this fellow may have some dangerous weapon and clapping a pistol to his Breast ordered him to take his hand out of his Pocket and with many threats made him take the Hints out of the Guns and Pistols which Hints the s^d Elliot put into his Pocket that the said Elliot and Ruger were then about to cut the Harness off the Chairs
(End)

but on remonstrances being made against this on account of the two Young Children who were suffering in the cold they desisted and having had the Chaise turned from Ashley Derry the said Elliot, Muger, and Miles mounted their Horses and rode off that this Deponent and Company having again turned their Chaise he mounted on Horseback and they proceeded on their Journey that in a path w^{ch} leads to some of Wm Elliotts plantations they saw something lying about 20 or 30 yards distant from the Main w^{ch} Road which they went up to and found Sarah Hartleys red Cardinal much broke lying by itself her Muffin in one place and her Jappel and Hat in another as also a Mans Shoe which this deponent supposes was one of the said Crosthwaikes from whom by the things lying scattered about in the manner in which they were found this Deponent imagines some further violence had been offered to the said Sarah Hartley that after having gone about six or seven hundred yards they saw the Chaise and Horse w^{ch} the said Crosthwaik had carried off from this Deponent standing by a run of water with one of the Shafts broke and the Back band of the Harness cut asunder by some sharp instrument and as the Chaise in this Condition could be of no use to the Deponent in his journey he left the same where he found it but took out and brought away his Horse that upon this Deponent & his Company arriving at Ashley Derry they found that none of the party that had assaulted them had gone over whereupon the said Rob^t & Margaret Williams desired this deponent to take his Horse and go to the Rev^d M^r Charles Martyn and desired him not to marry the said Wm

(Crosthwaik)

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Crosthwaite to the said Sarah Martley which he accordingly did. That M^r Martyn in conversation said to this Deponent suppose M^r Crosthwaite should debauch or had debauched your Sister would you not chuse that she should be made an honest woman after w^{ch} this deponent answered that he would rather have her an honest woman than a Whore That while this Deponent was with Martyn whom he did not find at home but on a visit to a sick Neighbour from whence he went with him to the House of another were his Horse was he there saw Barnard Elliotts boy deliver the said Martyn a Letter whereupon he asked Martyn where Crosthwaite and his party were and whether or not his Sister was to be married at his Martyns house to which he was answered no and that he was sent for to go some distance that this Deponent desired to be informed of the place to which M^r Martyn made some difficulty this Deponent told M^r Martyn that he would accompany him to the place to which he was invited in order to ask his Sister the said Sarah Martley whether or not she was married to the s^d Crosthwaite and M^r Martyn consented telling this Deponent that Barnard Elliotts plantation was the Place to which he was sent for That thereupon he went with M^r Martyn to his own house where at this Deponents desire the said Martyn wrote a letter to the said Robert Williams and sent it to Ashley Jerrry that this Deponent and M^r Martyn accordingly set out from the House of the latter for Barnard Elliotts plantation and upon the Road M^r Martyn asked this Deponent the particulars of the Assault w^{ch} being informed of by the deponent. the said Martyn said M^r Crosthwaite had acted like

(a)

a man of courage that about half an hour after eight o'clock at night this Deponent and M^r Martyn arrived at Barnard Elliot's plantation where he saw Doctor John Haley and the said John Myles the former with a case of pistols in his hand the latter with a single one a good deal disguised with liquor walking about the house and swearing by by Jesus or by Christ that none should enter the house except M^r Elliot, Crosthwaite or Huger that Doctor Haley came out and shook M^r Martyn by the hand who said to Haley you cant tell who I have got here on which Haley said what Captⁿ Massiey but being soon convinced of his mistake he asked this Deponent to alight from his horse and walk in which this Deponent declined to do asked if his sister was there to which he was answered that she was not yet come, but was expected every minute that M^r Martyn then said I have brought M^r Hartley to see his sister married and to give her away to w^{ch} this Deponent it was false and turned about his horse and rode home the said Deponent further saith that the next morning he breakfasted with M^r M^{rs} Stanlyarne Jun^r who told him that the night before he had been with Charles Elliot who informed him the s^d Stanlyarne that Crosthwaite, Barnard Elliot and Huger had loaded their fire-arms at his said Charles Elliot's house and this Deponent further declares that the Chariot above mentioned has not been restored to him and that by the behaviour of the s^d Crosthwaite, Huger and Myles this deponent was put in fear of and had cause to apprehend his life was in danger and this Deponent moreover saith that at

(the)

the time the aforesaid Sarah Hartley was forcibly and violently
taken and carried away in manner as above she had or was legally
entitled unto a considerable substance in Lands and Goods

Signed and Sworn before me

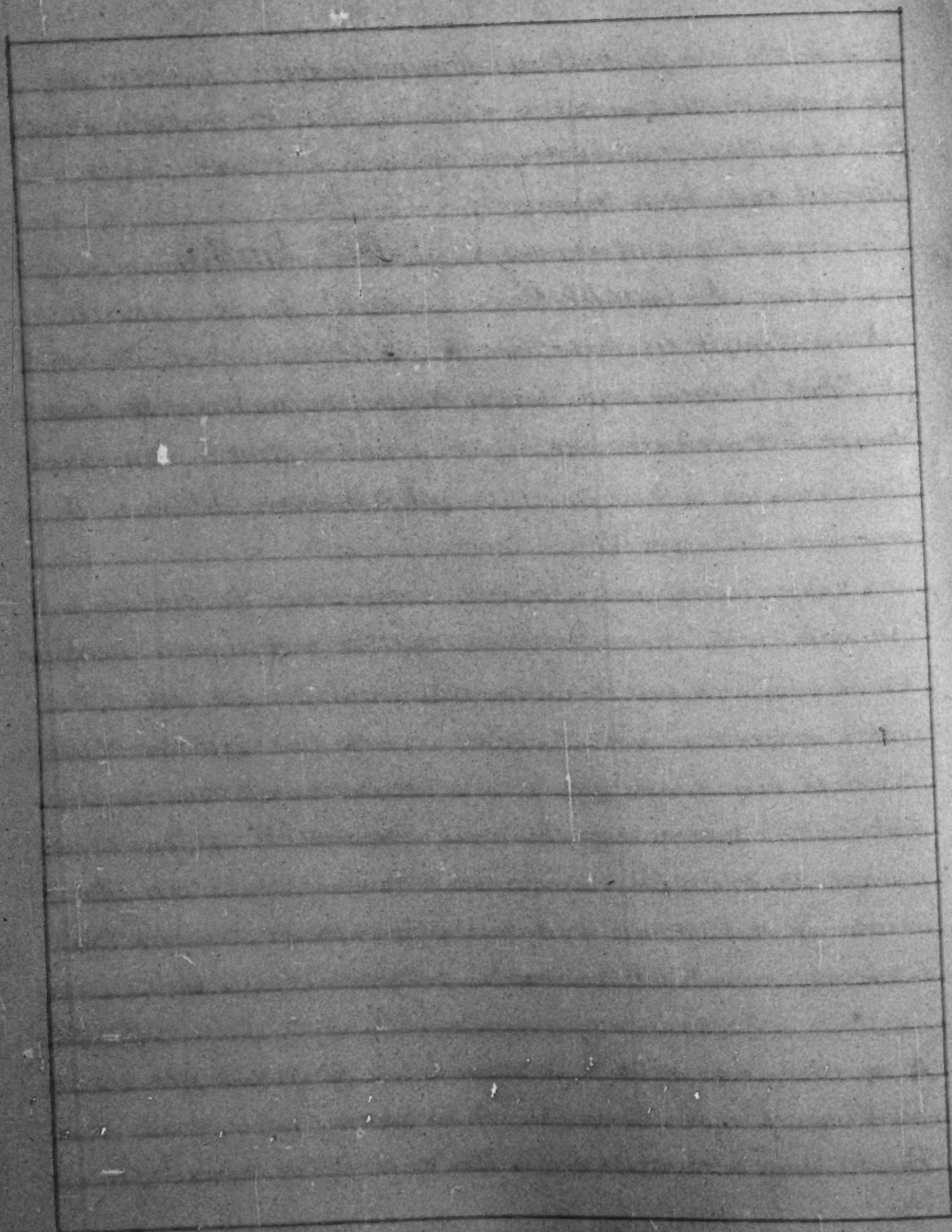
the day and Year above written

Thos Hartley

D. Campbell

A true Copy taken from the annexed Affidavits to the Petition
of Robert Williams and Thomas Hartley to His Honor the Lieu-
tenant Governor examined by

Jas Simpson C.C.



The Chief Justice's Answer

To the Hon^{ble} William Bull Esq
Lieut Gov^r of South Carolina

1st Feb 1766

May it please your Honor

I am greatly obliged to you for the very kind message you was pleased to send to me (13th January) by M^r Simpson with the Petition herewith returned to you. A.

When I received them I was in the utmost distress of mind on account of my late Domestic loss I still am very much troubled by my uneasiness has not been in the least contributed to by the Petition as I fancy the Contrivis of it hoped. B

I suppose it unnecessary to observe to your Honor, that there are no facts stated in the Petition which could (if true) justly affect me, malicious insinuations, false and absurd conclusions do indeed abound in it, but with respect to mere matter of fact there is nothing set forth for which as I apprehend I ought to be called to Account in my Station as Chief Justice of this Province, and I believe it is the first attempt that ever was made to Question a Ch: Justice or even a Common Justice of the Peace at least in this manner, for admitting a supposed offender to Bail before any default of Appearance in pursuance of his Recognizance
(Hocous)

A. That His Honor was pleased to say he would not hurry the Ch: Justice to answer the charge in that time of his trouble

B. Alluding to the death of his Wife on the 7th of January 1766

However for your Honors satisfaction I will endeavour to answer the Petition. In the first place it is alleged (and I acknowledge it to be true) that I decline the Inspection or perusal of the Depositions of the Petitioners. but at the same time it is confessed that I did direct Mr Charles Inckney who appeared as Council for Mr Crosthwaite to open the nature of the charge against him and that he did do it. As he did so I had as much material Information relative to the affair as was necessary to enable me to form a Judgement of the propriety or Impropriety of taking or refusing Bail. and this clearly appears from the Supersedeas which I issued.

My Reasons for not inspecting the Depositions are these

1st The petitioner Williams had been before with me at my house. endeavoured in a clandestine manner to prepare me with a relation to their contents and to prejudice me against Mr Crosthwaite and I was determined to avoid all undue influence which harsh Expressions. and an aggravated State of Facts (proper enough indeed for an instruction to an Attorney Gen^l.) might have had upon my mind. and to know no more of the matter. before it should come in Judgement before me than was necessary for the purpose then intended especially as I considered myself bound. not only by my Office but my oath to an impartial Administration of Justice.

2^{dly} From the knowledge I had of Mr Inckney I had not the least doubt but he would (and now from the perusal of the Depositions annexed to the Petition I am convinced he did) fairly open the
(Nature)

nature and substance of the charge. M^r Anckney Juras (and am) sure would scorn to impose upon me knowingly and supposing what was not likely. that he had mistaken the nature of the charge. M^r Campbell who took the depositions was present and I am sure ought to (and I dare say) would have corrected his Error

3^{dly} When M^r Campbell is present (before me) I do not usually read Depositions. they are read to me by him. and as the Depositions appeared to be very long. and my Wife laid then in the next Room in Extremis. I was willing to have as little noise as possible or any delay made in the Business

4^{thly} Most of the Supersedeas granted to Warrants in England and Ireland are issued without the Magistrate who signs them. upon seeing the depositions against the parties and a Supersedeas will be of no Effect if it does not appear from it. that the person who issued it has heard the nature of the Charge (at large) properly stated to him. If the party should be taken into Custody for anything not mentioned in the supersedeas he is not, nor can he be discharged in virtue of it.

The next Allegation against me is that I declared I should regulate my conduct in admitting M^r Croothwaite to Bail by what M^{rs} Croothwaite should say. and that I asked M^{rs} Croothwaite many Questions. I admit it and I hope I asked rightly. I wanted to be satisfied from her own Mouth. whether she had been taken against her Will. and if she was under any restraint at the time of her marriage (or)

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or even at the time that I then spoke to her. for I purposed to examine
against, not for M^r Crothwaite and I am clearly of opinion. from a
number of the best opinions in Law. that a Woman supposed to be taken
away and married, may be a witness against the person to whom she
was so married. But had the Law been otherwise as she M^{rs} Croth-
waite was not sworn the mentioning her is one of the many instances
of the frivolousness of the P^{er}tion, and of the over officiousness & malice
of M^r Campbell in communicating that and other immaterial cir-
cumstances for which no doubt he has had or I hope will have all
due applause and Reward

The next Allegation is that I admitted M^r Crothwaite to Bail on
such a Recognizance as is mentioned in the P^{er}tion and superseded
the Warrant granted by M^r Campbell, true, I did so and gave my Rea-
sons for it, and they were, I was satisfied in my mind, and still am
that I had authority and right so to do, notwithstanding the P^{er}tion.
Williams had before told me at my House, in a most imperious man-
ner and a most rancorous heart, that he was advised by two of
the best Lawyers in Charles Town, that I had no such Right and that
he hoped to see all the persons accused hanged

And My Judgement and Conscience told me to Bail M^r Crothwaite
And The Gentlemen that offered themselves and were admitted as his
Bail, are men of Established good character, and large fortunes, and
M^r Crothwaite came voluntarily, not coercively or in Custody to me to
give Bail, which to me was a manifestation that he meant to stand
his Trial and be amenable to Justice.

4thly I thought a Recognizance of £1000 proclamation money sufficient
 to render him amenable to Justice, and know of no sum that is fixed by
 Law in such cases, only that it is said that a Recognizance is to be in a
 sum certain for the appearance of a Felon, the Principle, is double the sum,
 as for instance in £400 or more the Sureties each of them in £20 and that
 the sum ought never to be less than £40 for a Capital Crime, so then a Recogni-
 zance may be taken for £80 sterling (including what the securities are
 bound in) in a case of Felony Your Honor observes that £1000-proclama-
 tion Money is much more than Eight times and nearly nine times that
 sum but if the Quantum of the Money in which M^r Crothwaite and his
 sureties were bound, was not enough to enforce his appearance and ans-
 wering, if the sureties themselves were ever so insufficient I apprehend
 this is not a time to call me to account for it. The Recognizance is not
 yet forfeited, and it is clearly laid down at Law that if a Prisoner
 is bailed by insufficient Sureties, do appear, according to the Condi-
 tion of the Recognizance, those who admitted him to Bail are safe
 inasmuch as the end of the Law is answered, and the appearance of
 the Prisoner as effectually secured by such sureties, as if they had been
 ever so sufficient. As to what is said in the Petition about M^r Crothwaite
 having been bound over to keep the Peace, I answer that upon M^r Pinckney's
 state of the case, it did not appear to me that the Gentlemen had entered
 into any Recognizance of that kind, no, nor does any such thing appear
 by the Depositions of the Petitioners (as is untruly suggested in their Peti-
 tion) it does indeed appear by their Depositions (a copy of which I
 have)

have since obtained from the Clerk of the Council) and the same thing to
 do the Gentlemen the Justice he deserved appeared from M^r Pinckney's
 opening. That a Breach of the Peace was committed by M^r Croothwaite
 but I submit it to your Honor that nothing about a Recognizance appears
 in the Depositions and as in the Petition any other than its said I
 have taken Recognizance for keeping the Peace from M^r Croothwaite
 it surely ought not to be presumed that I knew anything of it. I pro-
 test to your Honor that I was in fact totally ignorant of that matter
 till I read the Petition. I was not apprized that there would be, and I
 do not know that there could be insuperable difficulties in prosecuting
 a Suit upon a Recognizance in this Province, without the Aid of a
 Court of Exchequer, and if I had been of that opinion, it would have
 been illegal, arbitrary and unjust in me, for that reason, to refuse
 to admit a person to Bail, because that reason if it is one, will
 hold in all cases of Recognizance and then no person accused of
 any matter be it ever so trivial should be enlarged upon any Bail
 which is a Doctrine utterly repugnant to the Genius and Policy of
 the English Laws, and these it is to be hoped others as well as the
 Petitioners have a right to consider as their indubitable Birthright
 and best Inheritance and that they should not be arbitrarily violated
 to please any rancorous prosecutor And as M^r Williamson who is
 suggested by the Petition to be a felon and thence it is inferred, that
 he could not Legally be taken as one of M^r Croothwaite's sureties
 I answer that I never knew or even heard but by the Petition, that
 (he)

he was a felon, but I know and it is notorious that he is a Gentle-
 man of a fair Character (much fairer than the Petitioner Williams)
 and possessed of a very good Estate, which he very honestly came by
 and that he formerly has been, and is now a member of the Hon^{ble}
 the Commons House of Assembly, now sitting, in which, as I am infor-
 med he constantly attends. The Imputation in the Petition, that the
 English Laws have been by me Arbitrarily relaxed in favor of offen-
 ders, I aver to be false, malicious and scandalous, and sure I am, I
 can appeal to all the people in the Province, particularly the Gentle-
 men of the Bar (except the Petitioner Williams own Son who I suppose
 fabricated the Petition, and who has already declared in a public
 manner that I ought to be hanged for admitting M^r Crosthwaite to Bail)
 whether I in any one Instance have been arbitrary or have attempted
 to relax the Laws of the Land in favor of offenders. I think I have
 answered the Facts and Imputations set forth in the Petition, as
 to the Prayer of it "That your Honor will make such order, as will
 conduce to the due Execution of the Laws and faithful administration
 of Justice" I have not nor can I reasonably have the least objection to
 it, and am persuaded that nothing in the present case, can more Ef-
 fectually conduce to this, than the ordering the Attorney General to
 prosecute the persons who planned and embellished the petition
 and also the Petitioners for a false malicious, scandalous and defa-
 matory Libel on His Majesty's Chief Justice in this Province, not
 excepting by any means Robert Williams Jun^r. for taking upon him
 (most)

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most audaciously. to pass judgement of death against me (as I can prove
him to have done) even though it should be pretended that what he
and Dougal Campbell have said and done upon the occasion, did
not arise from rank malice and black partiality

I am

Your Honors most humble servant

Charles Skinner

1st Feb^y 1766

South Carolina

George the Third by the Grace of God of S^t Britain France and Ireland King Defender of the Faith and so forth.

To all and Singular our Judges and Justices Sheriffs Bailiffs and other Ministers to whom these presents shall come Greeting

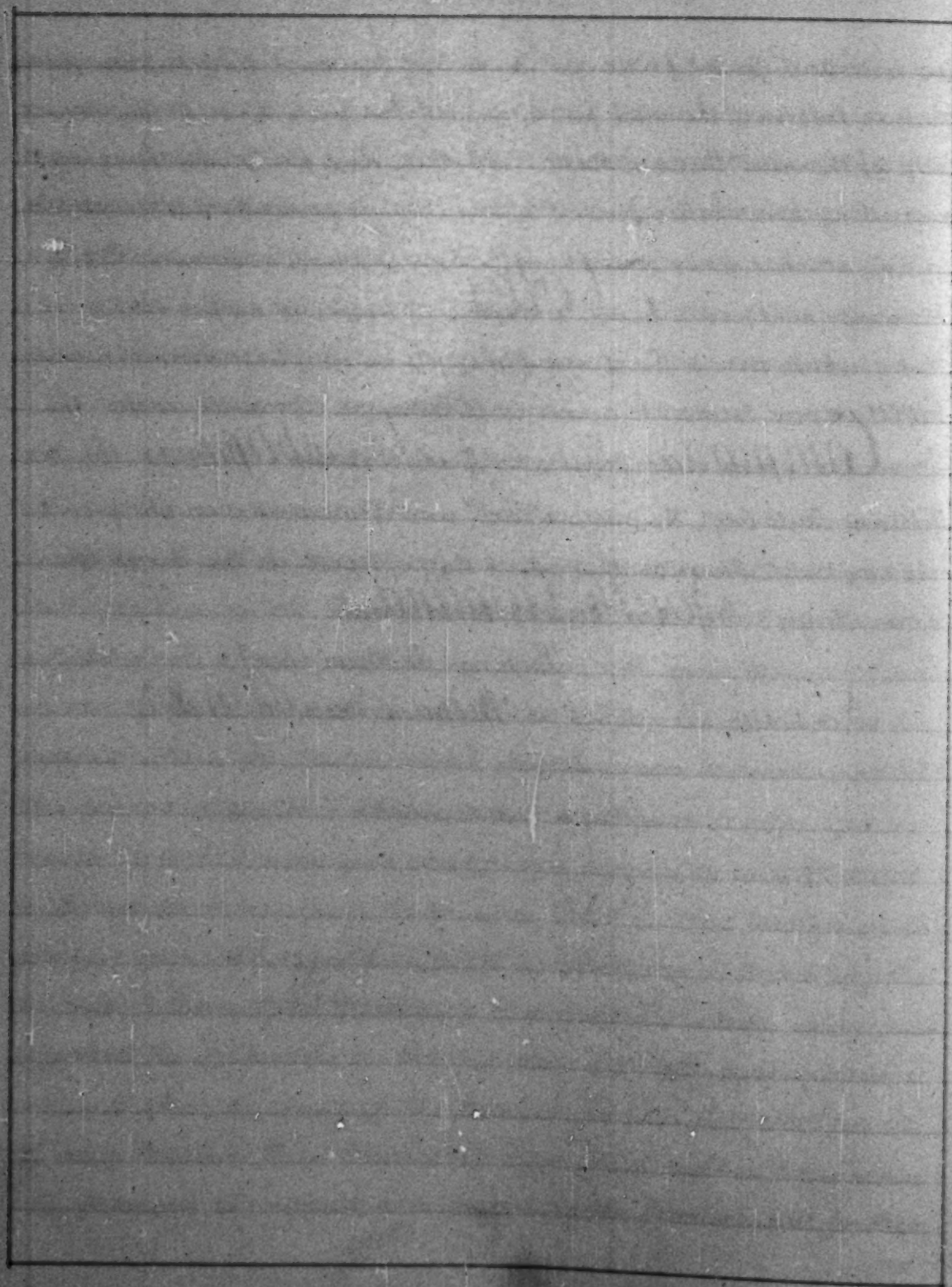
Whereas at a Court of General Sessions of the Peace Oyer and Terminer Assize and General Goal delivery holden at Charles Town in our said Province on the Twentieth day of March last William Ward Crosthwaite late of Charles Town in the Province of South Carolina Gentleman Benjamin Huger late of the same place Gentleman, Bernard Elliot late of S^t Pauls Parish in the said Province Gentleman and John Miles late of the said Parish Groom were indicted for Felony for that they on the twenty third day of December last against the Will of Sarah Hartley she then being a Maid and unmarried above the Age of fourteen and under the Age of fifteen Years and having substance in Lands and Goods did violently take force and convey away her the said Sarah with intention that the said W^m Ward Crosthwaite for Lucre and the sake of her substance should marry her and that the said W^m Ward Crosthwaite afterwards by the consent abetment and procurement of y^e said Benjamin Huger Bernard Elliot and John Miles did marry her as by the Records and Proceedings of the said Court reference being thereunto had may more fully and at large appear And Whereas the said Sarah Wife of the said W^m Ward Crosthwaite hath represented to us that no force or Violence was
(committed)

committed or offered to or against her will by either of the said Parsons, but
 that she went in company with them freely and voluntarily and was without
 any manner of compulsion lawfully married to the said William Ward Cro-
 thwaite And hath therefore with James Parsons her Testamentary Guardian
 humbly brought us graciously to grant our free and special Pardon to the
 said William Ward Crothwaite, Benjamin Huger, Barnard Elliot and John
 Miles Now Know Ye that we being moved with compassion of our special
 Grace certain knowledge and mere motion have pardoned remitted and
 released and by these presents for Us our Heirs and Successors, do pardon
 remit and release y^e said William Ward Crothwaite for and concerning
 the Felony wherof he stands indicted as aforesaid, and all Felony com-
 mitted by him on the Twenty third day of December last, whether he is
 indicted for the same or not, And his flying for the same thereupon And
 all and singular Indictments Inquisitions, Judgements Prosecutions, Con-
 victions, Attainders, Condemnations, Imprisonments, Forfeitures, and all
 other pains and penalties whatsoever had made given or adjudged, or
 hereafter to be had made given or adjudged, against the said W^m Ward
 Crothwaite for or concerning the premises And by these presents we do
 give and grant to him our firm peace by reason thereof, forbidding that
 the said William Ward Crothwaite be molested disturbed or in anywise
 aggrieved by y^e Justices or other Ministers of Us our Heirs or Successors
 or any of them by reason of the premises So that Nevertheless he
 the said William Ward Crothwaite may stand right in Court if any
 will prosecute or implead him concerning the premises And further
 (we)

we will and Grant for us our Heirs and Successors that this our pardon shall be taken in the most favorable and beneficial sense for the advantage of the said William Ward Crosthwaite and for the discharging & acquitting him for any arrest prosecution Imprisonment or Molestation in any manner for or concerning the Premises any misrecital. Repugnancy or contrariety herein contained or any other matter Cause or thing whatsoever to the contrary therefore in any wise notwithstanding Given at our Council Chamber in Charlestown aforesaid under the Great Seal of our said Province of South Carolina - Witness the Hon. William Bull Esq. Lieutenant Gov^r and Commander in Chief in & over our said Province this Third day of April in the Sixth Year of our Reign By His Honors command

Thomas Skottowe Sec^y

William Bull (L. S.)



Votes
— of the —
Commons- House of Assembly
— of —
South Carolina

From the 28th of April to the 7th of May 1766

(114 printed pages)

84214

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Commons

South

100

South Carolina

George the Third by the Grace of God of Great Britain
France and Ireland. King defender of the Faith and so forth

To Rawlins Lowndes Esq.

We reposing special Trust and Confidence in the ability
care prudence and integrity of you the said Rawlins Lowndes have
commissioned, constituted and appointed and by these presents do
commissionate constitute and appoint you to be one of our Assistant
Judges or Justices of our Court of General Sessions of the Peace over
and Terminus Assize and General Goal delivery holden and to be holden
at Charles Town in our Province of South Carolina aforesaid and also
one of our Justices of our Court of Common Pleas holden and to be
holden at Charles Town in our said Province to sit in Judgement
hear and determine together with our Chief Justice and in case of his
sickness or absence then without all Pleas Criminal and Civil
happening and arising within the said Province, and Cognizable
in our said Courts or either of them according to the Laws and Sta-
tutes of Great Britain of force in this Province, and according to the
several Laws of this Province To hold the said Office of Assistant
Judge and Justice together with all Rights Powers Authorities Privi-
leges Perquisites and Advantages whatsoever to the said Offices or
belonging or in any wise appertaining during our Royal Will
and pleasure Given under the Great Seal of our sd Province
Witness our Trusty and Well beloved William Bull Esq Lieut.
(Governor)

Governor and Commander in Chief in and over our said Province
this Twenty seventh day of February Anno Domini One thousand
Seven hundred and sixty six and in the sixth year of our Reign

By his Honors Command

Jas Simpson Secr^y

William Bull

N^a Indorsed on the back of said Commission

South Carolina

I do hereby Certify that by virtue of a Writ of Habeas Corpus Iohakem to me directed by the Honorable Wm Bull Esq. Lieutenant Governor &c I have administered to the within mentioned Rawlins Lowndes Esq. the several oaths required by the Act of Parliament passed in the first year of the Reign of King George the first and the said Rawlins Lowndes did subscribe the declarations required by an Act of Parliament passed the Twenty fifth Year of the Reign of King Charles the second. and that he the same day took the oath of office and the oath required by the Jury Law of this Province before His Honor the Lieutenant Governor

Given under my hand this 3rd day of March 1766

J^a Simpson

Rawlins Lowndes Esquire Commⁿ

A similar Commission to Benjamin Smith Esq.

A similar Commission to Daniel Boyley Esq.

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*Remarks on the Deductions made by the Assembly
of South Carolina from the Fees of the Chief Justice and
Clerk of the Crown in the Court of General Sessions of the
Peace, Oyer and Terminer, Assize and General Seal Del-
ivery held*

*The Chief Justice of South Carolina (who presides in both the Courts
of General Sessions and Common Pleas) being allowed the inconsider-
able Salary of One thousand pounds Currency which in value is
equal to only £1142. 17^s. 11^d p Annum sterling Money to support him-
self and Family. inconsiderable it is truly for a Gentleman in
his high Station. to keep himself from mean Submissions, Condescensions
or Acquiescence to Arguments before him in Judgment. in favor of such
to whom he might be obliged thro his Necessities.*

*The Commons House of Assembly in providing for any services done
by the Public Officers of this Province on the Public Account have guided
themselves principally by the Dee Bill of 1743. which whether it be a
Legal Practice or not. will appear the moment that it is considered. that
the said Bill was passed with a saving Clause, and to which the Royal
Assent. tho more than once solicited for. could never yet be obtained. &
that all former Dee Bills passed in this Province after the Year 1698
are either repealed or expired. The Dee Bill in that Year was a per-
petual Law. ratified by Her late Majesty Queen Ann. and is the only
one that is now in force in this Province.*

*It is a Maxim consistent with Justice and Equity and which
(we)*

we have from the very best authority That the Laborer is worthy of
 'his Hire' upon this Maxim the Legislature went when they passed
 the Ice Law of 1698 wherein they inserted a Clause directing that
 when any services were done by any public Officer for which there
 was no Provision made by that Act. The Ice to be taken for such service
 should be rated by any two Magistrates that were no wise interested
 in the Matter. But all the subsequent Ice Bills contain Clauses of a
 very different nature: for tho' all of them have not provided for several services
 performed by many of the Officers, yet they all Enact that no Fees whatsoever
 shall be taken but such as are specified in the several Tables of Fees there-
 unto annexed. The third Paragraph of the Act of 1743 Enacts 'That no
 Officer shall directly or indirectly demand take or receive any sum or
 sums of money for any other Article or charge that he may in his Office
 unlawfully contrive or Invent for any Business, Matter or thing save
 what are mentioned in the Table of Fees for such Officer'. Now surely
 taking a Quantum meruit for any service actually performed by
 any Officer in his duty at the Sessions and left unprovided for
 by the Ice Bill of 1743 in that particular wherein the like business
 done in the Court of Common Pleas is provided for by the same Bill
 cannot be construed either in Justice or Equity into an unlawful
 taking, contriving and Inventing Fees and Charges as the Ch. Justice
 and Clerk have both in the Common Pleas and Court of Sen^t Sessions
 taken even their Fees under the Bill of 1743 which they were by
 no means obliged to do, it being in fact no Law, and is the lowest
 (with)

with regard to them that was ever attempted to be passed into a Law in this Province; It is therefore Extremely hard that they should be cut off from any Emolument that they have an Equitable claim to under the 3^d Bill.

The first and most material Objection made by the Commons House of Assembly to the Bill this year delivered in of the Fees due to the Chief Justice and Clerk, seems to be the Change of swearing Jurors, the Keepers of Jurors, and of persons remaining in prison for their Fees and not able to pay them discharged out of confinement upon swearing they are not able to pay them. Now as the Table of Fees under the Bill of 1743 gives the Chief Justice one shilling proclamation Money for every oath administered in the Court of Common Pleas, and as the same Table gives to the Clerk sixpence Proclamation Money for swearing every Witness both in the Court of Sessions and Court of Common Pleas it is humbly submitted whether this Charge is not a reasonable one, that the Chief Justice should have the same allowance for a like service done in the Court of Sessions, that he has in the Court of Common Pleas And that the Clerk of the Crown should be allowed the like fee for swearing a Witness

The Second Charge Objected to is that for attending at the Drawing of the Grand and Petit Jurors but as the Bill of 1743 gives the Ch: Justice in the Court of Common Pleas forty shillings proclamation money and to the Clerk five shillings like money for attending the drawing of two Jurors and the more so as it is done upon no adjournment day of the Court of General Sessions but at a particular time appointed by Act of Assembly- It is I believe pretty well certain that some of the Public
(Officers)

officers in this Province where there are any services done by them not provided for by any Fee Bill charge the like Fee as is taken in the Kingdom of Great Britain for such service a practice that was never attempted by any Chief Justice or Clerk. otherwise they might have been more easy in their circumstances than they now are.

The last objection is that there are more Orders charged than are necessary and some that are charged that are not entered in the Sessions Book. It is thought to be not a little hard that the Chief Justice of the Province and the Clerk of the Crown should be thus scrupulously canvassed with the utmost nicety and exactness in the particular parts of their duty, and as by way of their account holding them up to public view and wanton Censure of such of that Body as may please to treat them with contempt by Free speeches there, as to say An Order might be made to snuff the candles &c and that no more Orders are made than are really necessary may it not be remarked in answer to this that no single Branch of the British Legislature ever yet took upon itself to determine what Orders were or were not necessary to be made by the Judges either in the Courts of Kings Bench Common Pleas or Oyer and Terminer. That there have been some Orders charged which have not been actually entered, is allowed, but these are very inconsiderable and of course, and if it is considered that when the most is made that possibly can be of the Fees allowed to the Chief Justice and Clerk in the Court of General Sessions they will not even then have what it is believed any unprejudiced person would think

a reasonable compensation for the trouble they are at in discharging their duty in the Execution of their respective Offices. it ought to be considered that granting a sufficient compensation was intended to be given to Public Officers by the Bill of 1743 for their respective services against which however the presumption is pretty strong as the Royal assent to it could never be obtained. yet surely some Addition to their appointments, than intended for them, must now become highly necessary as it is well known that in the year 1743. One hundred pounds would have gone so far, nay further in purchasing any of the Necessaries of Life in Charles Town as One hundred and fifty pounds now really can - The Clerk of the Crown and peace in this Province is very hardly Circumstanced by having Fees taken from him and given to other Officers for a duty properly belonging to his Office

In the Year 1764 whilst the Tax Bill lay before the Council the Chief Justice seeing so much cut off his and the Clerks Bill read what is hereinbefore mentioned at the Board, and then desired their Honors would be pleased to examine their Accounts and then recommend by Message to the Assembly that the Charges be allowed if it appeared to their Honors that the Business was done for that he would scorn that any charge made by him to the Public was not right and that thus cutting off from his Bill indicated unfairness in his Account which he would by no means suffer or have imputed to him but there being some differences subsisting at that time between both houses The Council declined
(interfering)

interfering in the matter to avoid further disputes with the Assembly. But in the late Tax Bill the Assembly have shown their resentment to the Chief Justice for his Skadiness (as he believes it to be) in the late unhappy disputes, for that they have cut off from his and the Clerks Bill to the amount of £723. 4^s although every order charged in the accounts are really and truly entered and the Business done, and he doth not know what their exceptions are or how he shall hereafter form or charge his accounts to please them, and moreover they Tax him at so much Pence for his Employment a charge he humbly apprehends ought not to be imposed on him or any other Officer of the Crown excepting such to whom they may give salaries which is not the case with the Chief Justice, who is paid his Salary by the King. The Committee recommended the present accounts to be provided for, but to shew how much he is obliged to his Brother Assistant Judge M^r Lovelace, he got up in the House and spoke against it, the House thereupon disagreed to the Report and ordered the accounts to be recommitted a copy of which Report (in the hand writing of the Clerk of the Assembly) is hereunto annexed.

The Chief Justice asked the Clerk of the Assembly for the objections to his account, that he told him he had them not, nor could he tell what they were, but that if any such Notes were taken by the Committee M^r Doyley (another Assistant Judge) who was Chairman must have them, wherefore the Chief Justice is altogether ignorant of the Errors (if any) in that account, nor can he tell how to

(govern)

govern himself for the future in those matters but thinks it very hard to be thus used, or that he must cringe to every Assembly man, for favor and their interests in the House to support his Account which is a meanness he can never submit to therefore humbly hopes the Ministry will do therein for his relief as in their Wisdom they shall think most proper Had the Ice Law of 1743 made an Equitable provision for public Officers, against which there is a very strong presumption, both from the then Governor's refusing to pass it without a saving clause and from its never yet receiving the Royal Assent. tho' often solicited yet the Equity of a further provision being now made for them will evidently appear from a comparison of the present prices of several of the necessaries of Life with what they were in 1743

Firstly house rent is raised full Cent & Cent the Chief Justice pays £50 Sterling p annum wch is equal to £350 Currency for the small house he lives in

Secondly, Firewood which in the Year 1743 was from 35^s to 40^s p Cord in the Summer, and from 45^s to 50^s or 55^s in the Winter is now got up to the Exorbitant price of from 60^s to 70^s in the Summer and to, from £5 to £6 in the Winter and Corn from 8^s or 10^s a Bushel. to 30^s or 35^s

Thirdly Beef in the Year 1743 which was used to be sold in the summer at 7^d p pound and in the Winter from 12^d to 15^d is now never sold in the summer under 1^d and in the Winter from 15^d to 2^d nay sometimes 2¹/₆^d p pound. the price of Poultry and every
(kind)

kind of small meal has rose in proportion. Oat and mutton being now sold at the rate of $3\frac{1}{6}^d$ p pound

Madeira-Wine which in this Climate is really one of the necessaries of life and which in 1743 was from £80 to £110 per pipe is now got up to from £180 to £280

Committee of Chief Justice and Clerks Account.

On comparing this Account with the two former Accounts for 1763 and 1764 find the charges correspond with those Accounts and as they were allowed the Committee therefore imagine themselves authorised to recommend the present acc^t to be provided for. They at the same time beg leave to inform the House, that there are many charges in this Account which are by no means warranted by the Dec Bill of 1743 nor can the Comm^{ee} on examining and perusing the Accounts for 20 years before find any precedent to support the charges made for swearing the Grand and Petit Jurys. the several new charges in Ch Just^s Account amounting to £230 and in the Clerks to £64. 12. 6

The House disagreed to this Report and ordered the Account to be recommitted. and the Committee directed to settle it as in the

Year 1769-	Amount of the bills deb ^t in	Assembly allowed only	Deducted
Chief Just ^s deb ^t in	£761. 5.	£325. 2. 6	£436. 2. 6
Clerks	£718. 5.	£431. 0. 6	£287. 4. 6
	<u>£1479. 10</u>	<u>£756. 3.</u>	<u>£723. 7.</u>

The Chief Justice obtained the above Report from the Clerk of the Assembly the 22nd July Instant 1766

The Chief Justice (some few days before the 3rd of March, that the Assistant Judges took their Seats on the Bench) happened to call in at the House of one of the Gentlemen of the Law where he saw a draft of the Petition prepared by those Gentlemen to be presented to him, at the next sitting of the Court, which he read and afterwards took a copy of, to consider the same against the day. He framed the answer he intended to give them and concluded the same with an order to suspend everyone of the Petitioners who had so uncandidly behaved to the Court, as in either way to draw it into Error. That he had on the 18th Nov^r (agreeable to their opinion and his own) resolved and was determined to abide the consequence.

(Copy of the Petition) To the Honorable Charles Skinner Esq/
Chief Justice of the Province of South Carolina

*The Humble Petition of the Practitioners of the Law in the
Supreme Courts of Judicature in the said Province.*

Sheweth That the Parliament of Great Britain having passed an Act for imposing a Stamp Duty in America to commence from the 1st day of November last, a total suspension of all kind of business, in Civil Cases has from that time ensued in the Courts of Law, in this Province to the great injury and oppression of the inhabitants thereof.

That your Petitioners have ever thought the principal excellency of the British Constitution, consists in the Subjects not being bound by any Law, to which he himself doth not consent by his representative

representative, nor liable to be taken or imprisoned, nor despoiled of his Freehold, Liberties, or free Customs, without legal Trial by his Peers. These inestimable privileges which constitute the happiness of English Men and excite the Envy of Foreigners are secured to his Majesty's dutiful and Loyal Subjects, the Inhabitants of this Province, by the Great Charter, the Petition of Rights and sundry Statutes declaratory of the liberty of the Subject, which together with the Common Law were made of Force here by an Act of our Assembly, that has received the Royal Sanction, and are still farther established and confirmed by repeated determinations in the Kings Courts, particularly in the famous case of Ashby and White in the House of Lords, the highest Tribunal of Judicature in the Kingdom, determinations which for their Wisdom and Equity, like the responsa prudentum amongst the Romans have been deservedly held authoritative and therefore it is a duty we owe to ourselves and posterity to declare that we can't think ourselves bound by the Stamp act which annihilates our natural as well as constitutional rights, extinguishes industry by rendering our property precarious and from joyful subjects of the best of Kings reduces us to a state of the most abject Slavery.

That upon supposition we are ever so strictly obliged to submit to a Statute of this extraordinary nature yet, inasmuch as that Statute, has not been transmitted to this Province properly authenticated, your Petitioners conceive your Honor has no legal evidence that such a Statute really exists, and altho an Act of Parliament, printed by the Kings

(printer)

printer. is commonly allowed in evidence to a Jury in Courts in England
your Petitioners apprehend it is never admitted as such by the Judges
on an Issue in Law where the Plea is the record unless duly Exempli-
fied under the Great Seal - Holt 612 - 1 Str 446 - 2 Saek 566.

And therefore Your Petitioners humbly submit to Your Honors
consideration whether in a case of so much importance to the Tran-
quility and happiness to the People of this Province the Stamp Act
ought not to be authenticated under the Great Seal before it should
have the least Influence or operation in the Courts of Judicature
here. And the rather as at this remote distance from the Mother Coun-
try we are precluded from examining or comparing the same
with the Original Record, have no representative in Parliament
and are unacquainted with its proceedings or the name of the
King's printer, but on the authority of newspapers or other periodical
pieces of Intelligence. Besides it may not be improper to suggest fur-
ther to your Honors consideration that if some mode of Authentication
is not adopted in cases of this nature it would be evidently in the
power of a rapacious minister at any time to impose upon the
Colonies. the arbitrary dictates of his own will for an Act of Parliam^t
and eventually involve them in a state of confusion or indeed effect
their final and absolute ruin That even admitting this obstacle
respecting the Authentication of the Stamp Act was surmounted
yet your petitioners humbly beg leave to represent to your Hon^{rs}
that Stamp paper is not to be procured in this Province which
(not)

not only appears by the certificates daily granted by His Honor the
Lieut. Governor, in order to the clearance of vessels, but is a matter
of public notoriety and as the Laws of the Land never require any-
thing that is impossible or vain. Therefore your Petitioners actuated
by the most disinterested motives and in compliance with the repeated
solicitations of all ranks and orders of People, humbly pray Your
Honor to permit the business of the Courts of Law to be transacted
as hath been usual in this Province without Stamps as in the
other Colonies under the like circumstances

And your Petitioners shall ever pray &c

B. P. R. O. B. J. South Carolina Vol 21

N. 41

South Carolina

Observations of the Chief Justice of South Carolina on the Expediency of enlarging his authority and augmenting his Salary. (In Lord C. Montagu's Ltr of 6 Aug^r 1766)

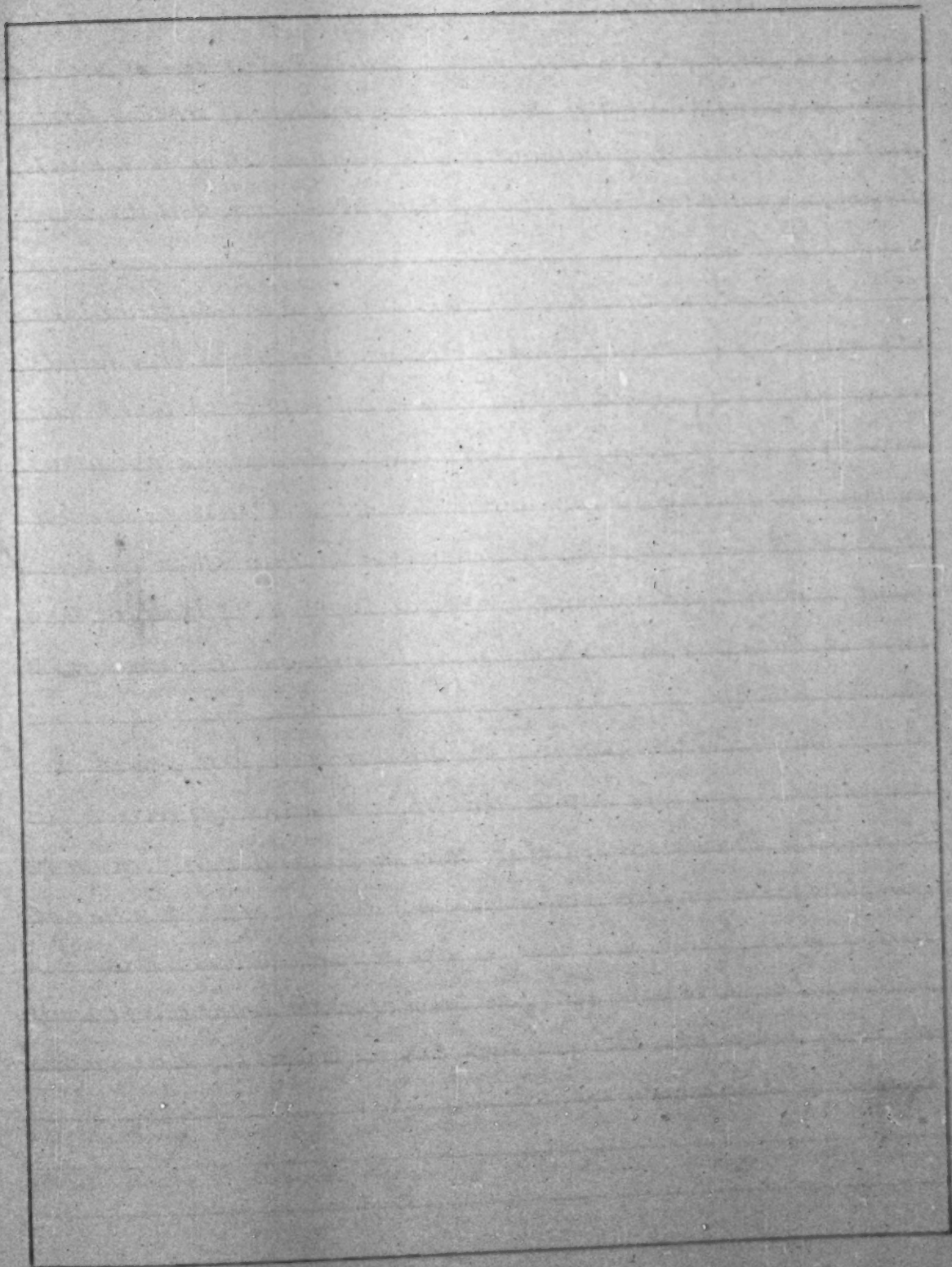
1st When the Chief Justice was appointed for this Province and before he left England he applied to Lord Halifax to know whether, any and what employment of the Officers of the Court were in his Gift or disposal That his Lordship referred him to M^r Pownall Secretary to the Board of Trade and his Lordship further said he would speak to M^r Pownall about it The Chief Justice afterwards waited on M^r Pownall who told him that all subordinate Officers of the Court (except the Provost Marshal) were to be of the Chief Justice's appointment and particularly the place of Prothonotary or Clerk of the Court and that it should be so is a point determined in Law in the case of Bridgman v. Holt as reported in Shower's cases in Parliament fo: 111 to 127 upon full Trial at Law and afterwards argued at the Bar of the House of Lords Had not the Office been granted to Douglas Campbell by the Crown who pays very little regard to the Chief Justice as he has often told him that his Commission was as good as the Chief's. Did the tenure of his Office hold of the Will or favor of the Chief, then he dared not to have offended as he has done nor could the false Writs now so much complained of have operation as they now have (and)

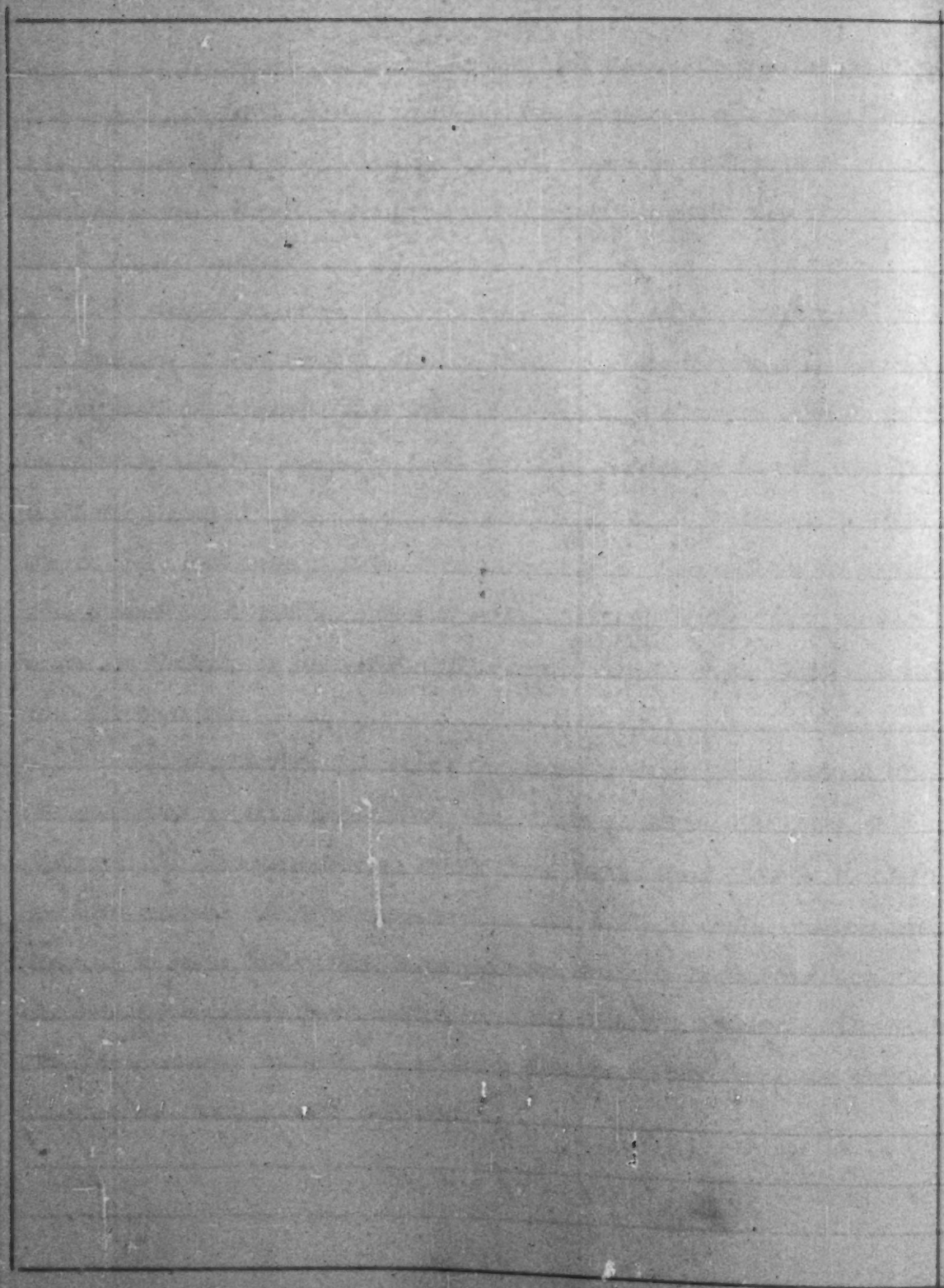
and consequently the Assistant Judges and Assembly together could not raise the pretended Authority they now have assumed of signing Writs and affixing their Seal thereunto which has now led on to so much confusion and trouble and may yet bring about more, that the wisest head cannot foresee

2^{dly} The smallness of the Chief Justice's Salary is so insufficient for the support of his Station, that an augmentation thereof it is humbly hoped will be considered of, that there be an instruction sent to his Excellency and a power given to the Chief Justice at his pleasure & without being obliged to give any Reason for it, to suspend or strike off the Roll, all or any of the Practitioners of the Law whom he shall think misbehaves either within or without Doors, to the Chief, or shall enter in Cabals or parties to inflame the minds of the People against the Government

3^{dly} The deplorable state that the Province is in, with regard to Magistrates, it is to be wished, that their Appointment were to go through the Recommendation of the Chief Justice, and that he have an without appeal, or process other than his Letter to order Justices and parties to come before him and answer to such matters wherein false Judgement might be given either in Town or in the country wheresoever the Chief Justice may be until such time as Circuit Courts are established by Law a thing greatly wanted.

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B. P. R. O. A. 4. 4. 1 Vol 223

p 291

Charles Town August 12th 1766

Sir

Herewith I transmit to you a Memorial of
John Hume Storekeeper of His Majesty's Ordnance
in this Province

I am

Sir

Your Obedient Humble Servant
The R^t Honble Seymour Conway Esq. C. G. Montagu

(Inclosure)

Extracts of the Journals of the Commons House
of Assembly of South Carolina.

Charlestown Friday 15th day of January 1766

Read a Petition of John Hume Storekeeper of His
Majesty's Ordnance, Setting forth That he officiated
as Ordnance Storekeeper Above two years and Eight
Months Antecedent to Your Resolution of the Sixth
of December 1762 from which date only his Salary
commenced. And that he had during the above per-
iod been at great trouble, and considerable Expence
in taking care of, and likewise in keeping Journals of
the same, Exact Copies of which were regularly trans-
mitted

mitted to the Board of Ordnance twice a year, agreeable to the Instructions in his Commission received from His Excellency Governor Lyttelton, dated the 20th day of March 1760. The Petitioner therefore humbly Prays that the House will be pleased to take his Case into Consideration and Order such a Recompence as in their Wisdom and Equity shall appear just.

Ordered that the said Petition be referred to the Committee Appointed to Audit the Public Accounts.

Wednesday the 13th day of March 1765

M^r Manigault reported from the Committee Appointed to Audit the Public Accounts. That they had considered the Petition of John Hume Esq^r Ordnance Storekeeper setting forth that he officiated 10 years and eight Months Antecedent to the Resolution of this House to provide a Salary for that purpose and praying to be allowed a Recompence for such Service, the Committee are of Opinion, that as no Salary was at that time provided for an Ordnance Storekeeper, M^r Hume should be allowed a Gratuity of £500 Currency for his Service.

The House took into Consideration the Report of the Committee of the Petition of John Hume Esq^r Ordnance

Ordinance Storekeeper, and the same being read and dated.

The Question was put that the House do allow Mr. Hume £500 agreeable to the report of the Committee

It Passed in the Negative.

South Carolina Charlestown

August 1st 1761

A true Copy

Tho^s Farr Junr.

Clock of the Honorable House of Assembly

(Inclosure)

To His Excellency The Right Honorable Henry Seymour Conway Esquire One of His Majesty's Principal Secretaries of State &c

The Memorial of John Hume His Majesty's Ordinance Storekeeper of South Carolina.

Humblly Sheweth.

That your Memorialist was Appointed by His Excellency Governor Lyttelton in the Month of March 1760 (by virtue of His late Majesty's Royal Order in Council to him bearing date the 1st day of April 1759) Ordinance Storekeeper of the said Province He
taking

taking from your Memorialist Security of One Thousand Pounds Sterling for the due and faithful Execution of the said Office.

That His Excellency the Governor aforesaid did desire Lieutenant Governor Bull, as soon after his departure from the Province as the House of Assembly met to apply to them to provide a Salary for your Memorialist which they did not then chuse to comply with

That His present Majesty was Graciously pleased by His Royal Order in Council bearing date the 14th of May 1762 transmitted here by the Right Honorable the Earle of Egremont a principle Secretary of State to desire the Governor or Commander in Chief of the said Province, to recommend in the Strongest manner, to the Assembly to provide a Sufficient Salary for the Ordnance Storekeeper.

That in Obedience to the said Order His Excellency Governor Bourne on the 24th of November following did apply on behalf of your Excellencys Memorialist to the Assembly who thereupon came to a Resolution to provide a Salary of Fifty Pounds Sterling per Annum for him to commence from the date of the Resolution only, which was on the 6th of December

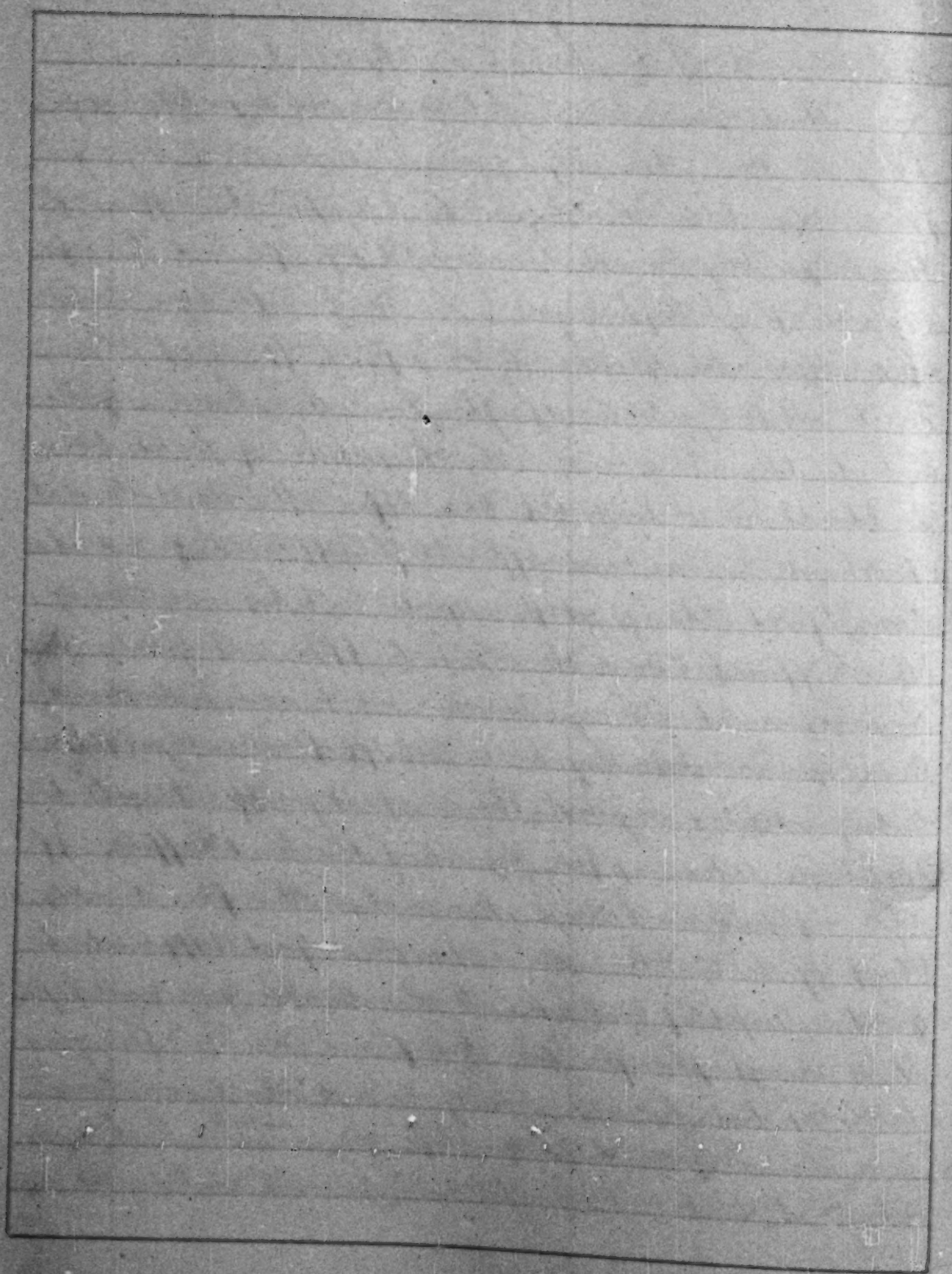
1762.

That your Excellency's Memorialist did afterwards apply to the Assembly, for an allowance of Salary from the time he began to Execute the Office of Store keeper, by a Memorial a copy of which he begs Leave to lay before your Excellency with this but had this Misfortune to be refused.

That Your Excellency's Memorialist has also from time to time and now with this return of all the Stores in the Province laid his Case before the Master General Lieutenant General, and Officers of the Board of Ordnance setting forth the great trouble he was at in collecting the Different Ordnance Stores together and getting an Arsenal erected, Carriages made, and various other troubles and Expenses attending his said Office, as well as the Salary allowed by the Province not being adequate to the time taken up in Executing his said Office.

Your Excellency's Memorialist therefore Humbly Prays Your Countenance in this his just Application to the Board of Ordnance in the Manner Your Excellency shall see proper for his Relief.

And he as in duty bound shall ever Pray



B. P. R. O. South Carolina B. T. Vol 21 A. 47

Charles Town August 30th 1746

My Lords

In consequence of a Complaint Transmitted Home by the Honourable Charles Skinner Esq. Chief Justice of this Province, to be laid before your Lordships, against the Assistant Judges, Officers of the Court, and Gentlemen of the Barr in general; And as I have the Honour of being Deputed by Richard Cumberland Esq. Patentee of the Office of Provost Marshal of this Province, to execute that Office in his stead; Permit me to lay before your Lordships some matters relative to my conduct in this Office, which tho' I may before this time stand accused; and perhaps liable to your Lordships censure; Yet I flatter myself when I have explained the Nature of my Office, together with the reasons for my conduct, it will take off the reflection thrown on me by His Honor the Chief Justice, and remove any prejudice that may be fix'd on your Lordships Minds, in consequence of a Perusal of the Ex Parte Complaint laid before your Lordships;

Before I proceed further, I think it may not be improper to mention to your Lordships the manner

manner in which this Complaint was transmitted home, and which I hope will induce you to suspend your Judgement upon the whole till such a time as the several Gentlemen accused can have an opportunity of vindicating themselves to your Lordships; It was by mere Accident it came to be known any such Complaint was intended to be made, and that not sooner than the Evening before the Packet sailed, by which it was sent, vizt. the Duncannon Capt. Edwards August 1st 1766. A friend of mine, Benjⁿ. Parsons Esq^r. Deputy Post Master General for this Department procured a copy from the Chief Justice, and as he understood from him it was not intended the particulars should be known; with a Generosity not intended by Mr. Chief Justice, gave me the liberty of perusing the Charge and by which means only, I am enabled to offer this in my Defence; A Priviledge it was intended none of us should have had, for on Applications made to his Honor for Copies of his Accusation against them he has (I am sorry to say) Not with a Severity of a Judge, refused them.

On my being possessed of a Copy I have mentioned, I waited immediately on his Excellency Lord
Charles

Greville Montague our Governor (as I was inform'd it was through him the Complaint made by the Chief Justice was to be laid before your Lordships, I must own the thoughts of it gave me much uneasiness, as I knew it was morally impossible for me to offer anything in my own defence by that Conveyance, And as his Lordship had taken upon him to lay it before so August a Tribunal, I must necessarily think it would add great weight to it, I pointed out to his Lordship the Charge against me, I told him I thought it very hard, a Complaint of that Nature should be transmitted home in the manner I heard it was intended; That I humbly hoped His Lordship would give us a hearing before he did it, that He might Judge of the Charge against us, and Represent them to your Lordships as his Excellency's Opinion of the matter might be, or at least, that He would postpone the sending them to your Lordships till the next Packet sailed, (which was then off this Place) that we might prepare a vindication of ourselves in so Misrepresented, I wish I had not occasion to say, unjust Accusation.

I must confess the Idea I formed of his Lordships Candour and Generosity, greatly induced me
to

to hope for success in my Application; But I too soon found myself mistaken, his Lordship said he thought the Chief Justice had been ill used and he must send them home.

I will now point out to your Lordships some Misrepresented matters in the Chief Justice's Memorial, and then as concisely as I can, offer what I hope will prove a sufficient vindication of myself.

Mr Chief Justice says, the Provost Marshal Promised his Honor the Chief Justice, and gave strong, and repeated assurances, that he would strictly comply with his order not to serve Writts, except on Stamped Paper &c.

The Provost Marshal in Answer, Acknowledges in private Conversation. Mr Chief Justice has told him not to serve such Writts, and it was his then opinion he could not with Propriety do it, and in consequence intimated the same, to the Chief Justice, and wrote his Constituent Mr Cumberland to the same purpose; Mr Chief Justice would but have said the truth, if he had observed to your Lordships, this was at a time when the Opening of the Courts of Justice was first talked of in this Province, and before myself or any Person
indeed

indeed I Believe had Seriously thought of the part they must Necessarily act in their several Offices, and what I said then was merely as an opinion without a certainty, having not at that time looked into any Book relative to the Duty of the Sheriff on that Head.

His Honour says in the same Paragraph, I told him I was well aware of Blank Writts remaining in the Hands of the Attorneys, that might be made use of to serve Particular Purposes. This I possibly deny for I was then a stranger to the method of the Chief Justice furnishing with Writts, and should have been so to this day, had not his Honour charged me with it

His Honour in his Next Paragraph says much to the same Purpose, only corroborates it by the declaration being made in the presence of some Attornies; & the Clerk of the Court, the Attornies the Chief Justice means are Mr O'Brien & Oldham, two Persons then his Domesticks; and who call'd at my house sometimes with his Honour as he pass'd & repass'd. The Charge I hope is not Heinous, or I should have Occasion to take off the weight, the Testimony of those two Gentlemen might fix on
your

your Lordships Minds, But I admit I was then of the same Opinion.

His Honour goes on and says, It is to be lamented the Provost Marshal has not been consistent with his declaration, and the obedience he ought to have paid to Honours orders, and that he would have prevented much trouble and Anxiety to many as well as to himself Hereafter, As Persons whom he has arrested on those Writts, and who now remain in Goal thereon, cannot be Bailed because of the want of Stamped Bail Bonds, so that he is threatened by those Persons with Suits, for the recovery of damages for false Imprisonment.

I wish his Honour had been candid enough to have related the whole, and Not by Extracting those Parts he thought best fitted his Purpose. Induce your Lordships to think the Provost Marshal Acted either without reason or a regard for his own safety. Before I became Inconitent, I apply'd myself to Daltons Office and Authority of the Sheriff, and there found I had entertained a wrong Idea of things, I immediately transcribed the Opinion of Lord Coke and others on the Subject (which I shall likewise offer to your Lordships consideration) and waited on his Honour the Chief Justice.

After

After he had perused it I necessarily asked his opinion, tho' I must confess he did not positively give it me but seemed to waver in his former sentiments. His Honour says I should have prevented much trouble and anxiety to many &c. I am sorry to say the Picture of distress is badly painted and in false colours. One Man only and he just leaving the Province was Arrested and Imprisoned (myt Stokes) and the no bail could be taken by me, as I should thereby have incurred the Penalty under the Stamp Act; yet had even a joint Note been proposed for the Security of the Payment of the Debt to the Party Suing, I should with all my heart have dispensed with his going to Goal as I sincerely feel for every Man whose Necessity is such, as to oblige him to go to so shocking a Place as our Goal is

Your Lordships may by the account before you, think the Man (for there was only one Imprison'd) suffers greatly (especially as he was fed on Bread and Water only, as Mr. Chief Justice tells you in the Prisoners petition to the Governor; and which was drawn up by himself and Mr. O'Brien, then Council for the Prisoner.) As he was arrested April 14th 1766 And the Memorial says he is now

in Goal, (vizt August 5th 1766 the day the Packet sailed hence, by which the Complaint was sent home; Let me assure your Lordships he was discharged May 15th following, And as to the Troubles and Anxieties to myself, and being threatened with Actions of false Imprisonment, I wish it would redound any thing to M^r Chief Justices advantage, I should relate it with much more Satisfaction; But as I mean the truth and will not recede from it, in any Particular I will say, I have since been credibly informed that M^r O'Brien urged by the Chief Justice did all his Endeavour with the Man, to bring an action against me, but he was wiser, he consulted unprejudiced Persons, and plainly found his Action could not be Supported. And he M^r Chief Justice was disappointed in what he would have counted in, Nay which is mentioned to your Lordships as a fact, and Aggravated by the Plural Number. The other part of the Trouble and Anxiety I am to suffer, is for the Misconduct which M^r Chief Justice thinks I have been guilty of. But as I hope I shall be able to produce the best Authority for the Support of my conduct, and Confident of having an Impartial Enquiry from your Lordships strict and Equitable adherence to Justice, so I at present am not

Apprehensive

Apprehensions of an Evil.

In another part of the Chief Justices Complaint he gives an Account of the said Stokes being Arrested and Imprisoned, and after relating some Conversation that passed on that Occasion, he says he met the Provost Marshal in the Street, and asked him in the presence of M^r Lough, concerning the Arrest and whether he did not remember his Protest against serving Writts, and Whether he did not tell him to shew him all Writts that might be brought into his Office.

The Provost Marshal remembers many Protests of His Honours and particularly his desire of shewing him the Writts that might be sent into his Office; but at the same time he thought it an Order of such a Nature, that he could not possibly comply with. He remembers likewise, the Chief Justice came to his House, and desired to see the Writt which on shewing him he had great difficulty in preventing his Honor from striking his Name off it; I must own I was much surprized at such an attempt, & I think it was a sufficient caution to me for the future. His Honor not satisfied with that, Mentions it to the Lieut Governor in Council, desiring I might be

be summon'd before them which I accordingly was and His Honour the Chief Justice in Council ordered me to show the Writ. I now thought it a proper time to speak to the support of my Office, and my right. I addressed myself to the Lieutenant Governor and told him, I was of Opinion that my Office was of such a Nature, that it required secrecy. And I was not obliged to shew the Process entered in my Office to any Person. But if it was the Opinion of that Board or His Majesty's Attorney General then present; that I ought to produce it, I would readily acquiesce. It was their Opinion particularly Mr Attorney General I ought not. I am Apprehensive this has somewhat Incensed His Honour against me, together with some other little matters that passed, prior to this, but which not being pertinent to this matter shall not trouble your Lordships with

His Honour then informs your Lordships of the Answer I made him, which was that I was a Ministerial Officer, & which I will now proceed to Establish, together with the Nature of my Office and the Reasons for acting as I have done.

Lord Cock Book 6 fol 52 9. 65 & 10 70 & D & H 150. Says. The Sheriff, nor his Officers, are not to

to dispute the Authority of the Court, from or out of which they shall receive any Writts Process, or other Warrant, but they at their Peril, are truly to Execute all Writts Process & Precepts of the Judges, Justices or Court to them directed, and that according as the said Writts shall Command, in every behalf, and to this also they are sworn ?

James 1 Chap. 13. *Prosecutio 2.* And Besides the Sheriff is bound to Execute all Process of the Law as well by his Oath, as by his Office; and the Sheriff is not bound to take notice of the Law, for the Law intends him to be a lay person and not to have Knowledge of the Law, so that whereas a Writt shall come to him by Authority or without Authority, he may not argue or dispute it, and therefore if a Capias shall come to the Sheriff without any Original, and he shall serve it, he is excusable in an Action of false imprisonment, for the Sheriff being the Officer and Minister of the Court, it shall be against reason to Punish him for executing the Process and Commandment of the Court, And the rule is. *Quicumque jussu judicis aliquid fecerit, non videtur dolo male fecisse, quia necesse est*
 book 10 fol 40

Lord

Lord book 10 fol 46. When a Court hath Jurisdiction of the Cause, and shall proceed Incess, ordine or Coniunctly then the Officer or Minister of the Court which shall execute the Precept or Process of the Court, is Excusable, so that no action will lie against him. But when the Court hath no Jurisdiction of the Cause there all the proceedings is *coram non iudice*, and therefore there an Action will lie against the Officer, without any regard had to the Precept or Process of the Court, and as to the Former Rule. *Quicumque Jussu Judicis aliquid fecerit, non videtur dolo Male fecisse, quia parere necesse est.* the Law well alloweth thereof; But when he hath not Jurisdiction of the Cause. *Non est iudex.* And it is not of necessity to Obey him who is not Judge of the Cause, no more than it is to obey a meer Stranger. for another Rule is *Judicium a non suo iudice datum, nullius est Momenti.* And accordingly in the 22^d Edward 3th fol 33 Pigott saith, that if the Court have not Power and Authority (in the Cause) then their Proceeding in *coram non iudice*.

I will not take up more of your Lordship's time by a Variety of Quotations to the same Purpose, as I think I have produced such as will at first
view

view Induce you to determine my Office wholly Ministerial; and that I am solely at the Discretion and Government of the Court, What I have done has been from Principle; and with a strict adherence to what I thought my Duty, And let me Assure your Lordships no view could present itself that could possibly induce me to act in Opposition to any Act of the British Legislature, I must certainly in such a case have proved myself an Enemy to my self, and I will defy any Man breathing to accuse me of ever violating that Duty I owe my King and Country. It does not become me to go further than what relates to myself in the Chief Justices Complaint, And I have only now to hope that when your Lordships have considered the Affair properly instead of being censured for my Conduct, I shall be happy enough to receive your Approbation and that I have done only my Duty

South Carolina

I am

Charles Town

My Lords

September 27th 1766

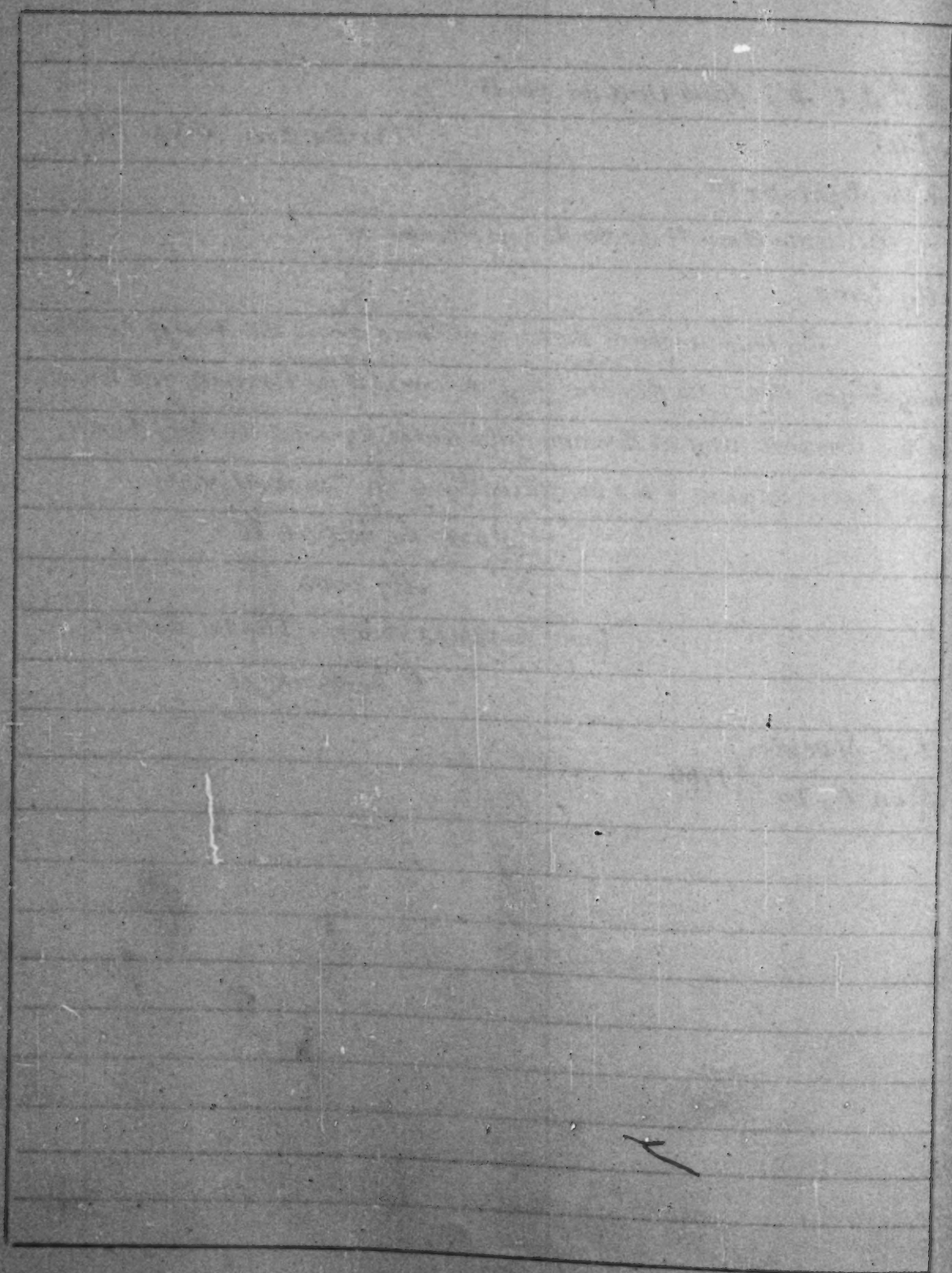
Your Lordships

To the Right Honble the Lords
of Trade and Plantations

most Dutyfull
and Obedient Humble Serv^t

Rec^d Oct^r 27. } 1766
Read Nov 6. }

Robt Pinckney



B I A O B I South Carolina Vol 21

N 42

Charles Town 19 Sept 1766

To the Right Hon^{ble}

The Lords Comm^{rs} for Trade and Plantations

My Lords

By the Grantham Packet Captⁿ Jones I have the Honor of transmitting to you three Acts that have had the Assent of the Assembly and Council of this Province and at the same time at the request of the Chief Justice some Papers relative to his Proceedings and the Assistant Judges

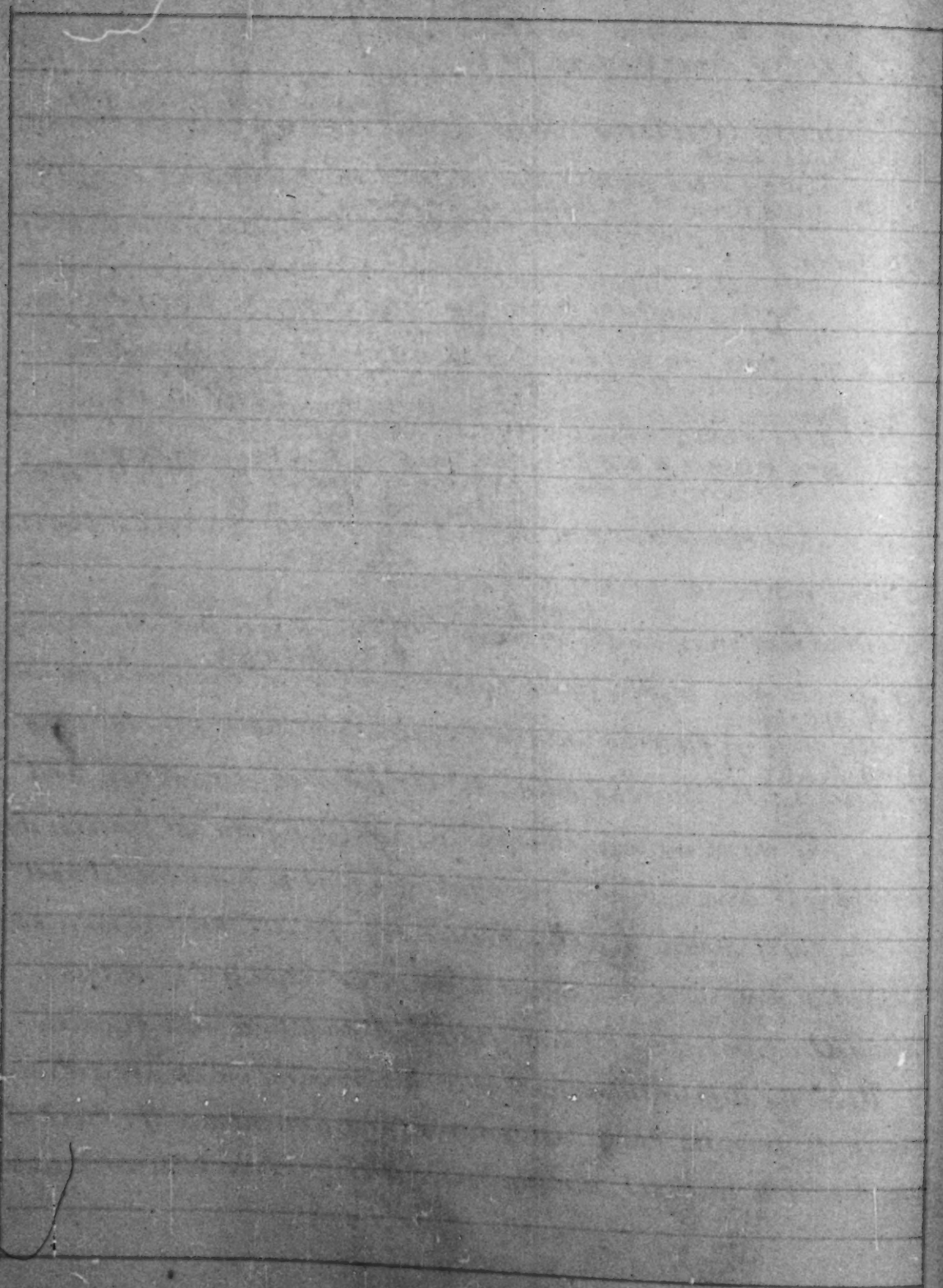
I have the honor to be

My Lords

Your Lordships obedient humble Servant

C. G. Montague

Rec^d 31 October
Read 6 Nov^r } 1766



B. P. A. C. South Carolina. B. J. Oct 21

N 43 (In Gov^r's Letter of 19 Sept. 1766)

South Carolina Some further observations of the Chief Justice upon matters that occurred in this Province since the yth of August last when he delivered to M^r Barrons the Deputy Postmaster General who was then about returning to England in the Packet a Book containing a Narrative of things relative to the Courts of Law for the Earl of Halifax

The Chief Justice observes that M^r Barrons arrived here on or about the 18th of October last and departed from hence on the 8th or 9th of August to whose charge and care the Chief Justice delivered a Book of Papers as above mentioned directed to his Lordship

These Gentlemen had a Message to the Chief Justice from Jas Deane Esq Merchant in London which happened to begin an acquaintance between them. - In conversation between them upon some matters on a visit. M^r Barrons said "M^r Chief Justice your Nation and mine are the same and therefore we ought to regard one another the more for it" This with some circumstances that he mentioned. Begat in the Chief Justice, a very sincere esteem for M^r Barrons, and he regarded him as a Gentleman to whom he might freely unbosom himself and they visited each other with confidence and freedom.

Upon the different disputes that arose concerning the opening of the Courts of Law, the Chief Justice himself gave or ordered the Clerk of the Court to give M^r Barrons copies of the several papers concerning
(the)

the disputes as well, as that he gave him information of some secret matters that he might mention to his Lordship, when he went home. In the morning of the day that M^r Barrons said he was to go on Board the Packet, intending to sail for England, he sent a note to the Chief Justice by a Negro fellow: the copy whereof follows. M^r Barrons presents his Compliments to the Chief Justice and acquaints him that the Packet will sail this day, and the mail to go by her, will be closed at the Office at 12 o'clock this morning M^r Barrons wishes to have the pleasure of seeing the Chief Justice as early as he can and to have the Book of Papers. Thursday Morning- If the Book could be sent to me by the Bearer I should be glad, as it will give M^r Barrons an opportunity of running it over before he embarks-

The Chief Justice asked the Negro to whom he belonged, who answered to M^r Pinckney the Provost-Marshal, but the Book not being then ready could not be sent till about dinner time, when the Binding of it was finished, the Chief Justice went into Town with it, and carried with him a like Book for my Lord Halifax, and took with him Paper, Paper, Wax and the Seal of the Court, to make up his Lordship's book proper for the Mail, under address to M^r Journal at the Board of Trade, on His Majesty's service to be sent to his Lordship but M^r Barrons tying the Books in a middling sized red trunk that was then on the seat of the Window and seeing they would fit therein, he said he would take charge of it for his Lordship, and deliver it as soon as he should arrive at London but that if it was packed up and sealed it would not go well into the Trunk, but must go into the Mail, but that if he had it, it
(would)

would give him an opportunity more freely to speak to his Lordship on the subject of the things mentioned in the Book to which he was a witness. The Chief Justice said he intended to dine with him and after dinner to wait upon him and his daughter to see them go on board the packet. he seemed to excuse it alleging that the House was not his but M^r. Pinckney's to which the Chief Justice then said he would dine with Timothy on this he paused a little and said to this or like purpose "Why M^r. Pinckney the Provost-Marshal is to dine here perhaps you may not choose to dine with him" To which the Chief Justice answered he had no objection, so that seeing he was resolved to stay M^r. Barron again shewed a seeming thoughtfulness and turned to the Chief Justice speaking greatly in commendation of M^r. Pinckney and the good opinion he had of him as an honest worthy Man, and one that as he was leaving the country he would heartily recommend to his confidence and more intimate friendship he then asked the Chief Justice whether he had made any mention of M^r. Pinckney in those papers he was sending to his Lordship. The Chief Justice answered he plainly told the facts so far as it was necessary to make mention of the Provost Marshal in the course of the unhappy troubles that happened about the Stamp act. He then asked if he would permit M^r. Pinckney to read those parts, that he may be able to send some reasons to justify the necessity of his so doing, to which he instantly replied he would with great willingness and added, that he wished it may be passed over at
(home)

home. Soon afterwards M^r Pinckney came in and the Chief Justice from a sure confidence that he had said nothing but the truth in those papers, told M^r Pinckney he was very ready to let him see what he had wrote. But to his very great surprise M^r Pinckney denied the things he had spoken to the Chief Justice, as assurances to him that he would not obey or serve any writ if it was not upon Stamp-Paper. He ran out into exclamations, as, that he could not believe the Chief Justice would misrepresent and say for him things that he never did say. This and more to the like purpose, so confounded the Chief Justice, to be charged with a Misrepresentation, that he could scarce make an answer. he retired awhile to recover himself and recollecting that he could prove it by witnesses and that M^r Pinckney had then offered and insisted upon a Trial of those matters before the Governor, the Chief Justice turned in again and in the presence of M^r Barrons accepted the offer directly and said he was ready to put it to that Issue. then M^r Barrons interpreted so as to desire the Chief Justice would furnish M^r Pinckney with a copy of all the several matters wherein mention was made of his name in the Book in order for him to prepare his defence which the Chief Justice promised he would do and passed his honor upon it, so that being called to dinner they retired from that Room. The Chief Justice made little or no dinner, and the taunting looks (under Brow) of M^r Barrons towards him then discovered he was not that friend he took him for, who affected him much, yet he stifled his resentment. M^r Pinckney & M^r Barrons
(retired)

retired a little after dinner and the former went off to the Governor and carried the Book of Papers with him, and there denied the matters aforementioned and prayed the Governor that he would not send the Book given to his Excellency to be transmitted to the Lords of Trade by that Packet, till the enquiry was gone through before his Excellency concerning him, to which his Excellency answered (as the Ch. Justice has heard) that he had already made up his Packet and sent it to the Post Office and therefore could not delay the sending it.

The Chief Justice suspecting the Chief Justice had gone to the Gov^r for that purpose, he waited his return, and when he heard his, and M^r. Barron's voices below stairs he took his leave of the Company above and when going away thro' the room they were in, M^r. Barron's again reminded him of his Promise, to give M^r. Inckney a copy of those parts of the Papers wherein mention was made of his name or Office, which the Chief Justice again promised and took his leave - But soon afterwards meeting with M^r. O'Brien by accident on the Bay he told him he wanted him to go to M^r. Timothy's with him and they walked there directly where he sent up a Message to M^r. Barron's desiring to speak with him on particular Business, he was kept waiting for some time and at last M^r. Timothy came down and said M^r. Barron's could not be spoke with as he had just fallen asleep in his Chair, and he would not awake him - Then before M^r. Timothy the Chief Justice asked M^r. O'Brien whether the Provost Marshall had given any and what assurances before him, to the Chief Justice (that)

that he would serve no writ or process but such as were upon Stamped Paper. to which M^r O'Brien gave a positive and direct answer that he did and added more than the Chief Justice recollected or remembered till then, all which he desired M^r Timothy to inform M^r Barrons of. Now to shew the part M^r Barrons has acted towards a Gentleman whom he led to believe he had friendship for and that he often said he would represent to persons in power at home, the distressed situation of the Chief Justice of this Province, in his circumstances & on all sides oppressed and borne down with party rage, that he ought to be supported or that there would some future consequences happen that may make an indifference to his representations fatal or to this Effect.

M^r Barrons it is supposed doubted the word and Honor of the Chief Justice, and as he believes either gave one of the Books to M^r Pinckney or permitted him or persons employed for the purpose to take Extracts of all such matters as they thought proper thereout not only of what merely related to M^r Pinckney as Provost Marshal but to M^r Clerk of the Crown and others as the Chief Justice had occasion to make mention of in the course of those papers which perhaps are altered or obliterated, or made to tell inconsistencies so as to do him prejudice, whereby more live Coals are heaped upon him, the Assistant Judges drew up a Memorial against him to the Governor, the Committee of Correspondence of the Assembly have wrote Instructions against him to M^r Garth their Agent at home and (he)

he is informed that they intend at their meeting in November to enter into some very severe Resolutions against him, and the whole party to do every thing in their power to distress him and ruin him if possible. Most of the Attorneys several of whom are of the Assembly and almost all of them expecting that they will be struck off the Rolls join in on common consent, he fears, to do him prejudice, so that he has no hope left but the protection of Government which he humbly implores. The Chief Justice is constantly opposed in Court in almost everything he offers or recommends. At the sitting of the Court in August he desired the Clerk to draw up a short note or order that the Repeal of the Stamp Act was duly notified to the Chief Justice, on the 5th of June last when his Honor gave notice by the Clerk of the Court that he was ready to do business as usual, this they opposed and would not suffer to be entered tho' the Chief Justice said he meant no more by it, than to give an answer upon record, that the Order made upon the 13th of Nov^r for the payment of the Stamp duties was rescinded. The Chief Justice on the 25th of August being then a little recovered from an indisposition he had, sent M^r Pinckney a message by M^r Campbell the Clerk of the Court, that as he already had copies from the Book of Papers, of what concerned him he was ready to come to a hearing before the Gov^r upon the matters he was pleased to object to in the Book of Papers sent home to the Lords of Trade and to my Lord Stalefax, that he had full and sufficient proof to support what he had said and that he would attend him at his Excellency's at his own time whenever he was
 (pleased)

pleased to appoint it- In this message the Chief Justice received from
answer a note from M^r Campbell as follows:-

"L. Campbell begs to inform the Chief Justice that he delivered
his message to the Provost Marshal, who says that as the complaint
against him has already gone home he chooses to vindicate himself
at home also. Thursday 26th August 1766"

Herewith is annexed the Declaration of Bennet Oldham Gent^l
one of the Attorneys of the Court of Common Pleas 1st wrote by him soon
after M^r Pinckney thought proper to deny the declarations aforesaid
but he now happens to be lying on a sick bed & his Affidavit would
be annexed- also is annexed the affidavit of M^r C'Brien Attorney
both in support of what the Chief Justice hath alleged with regard to
M^r Pinckney's declaring that he would not serve any writ or Process
if it was not upon stamped paper, for that he could not think it
to be the King's writ because of the Stamp act.

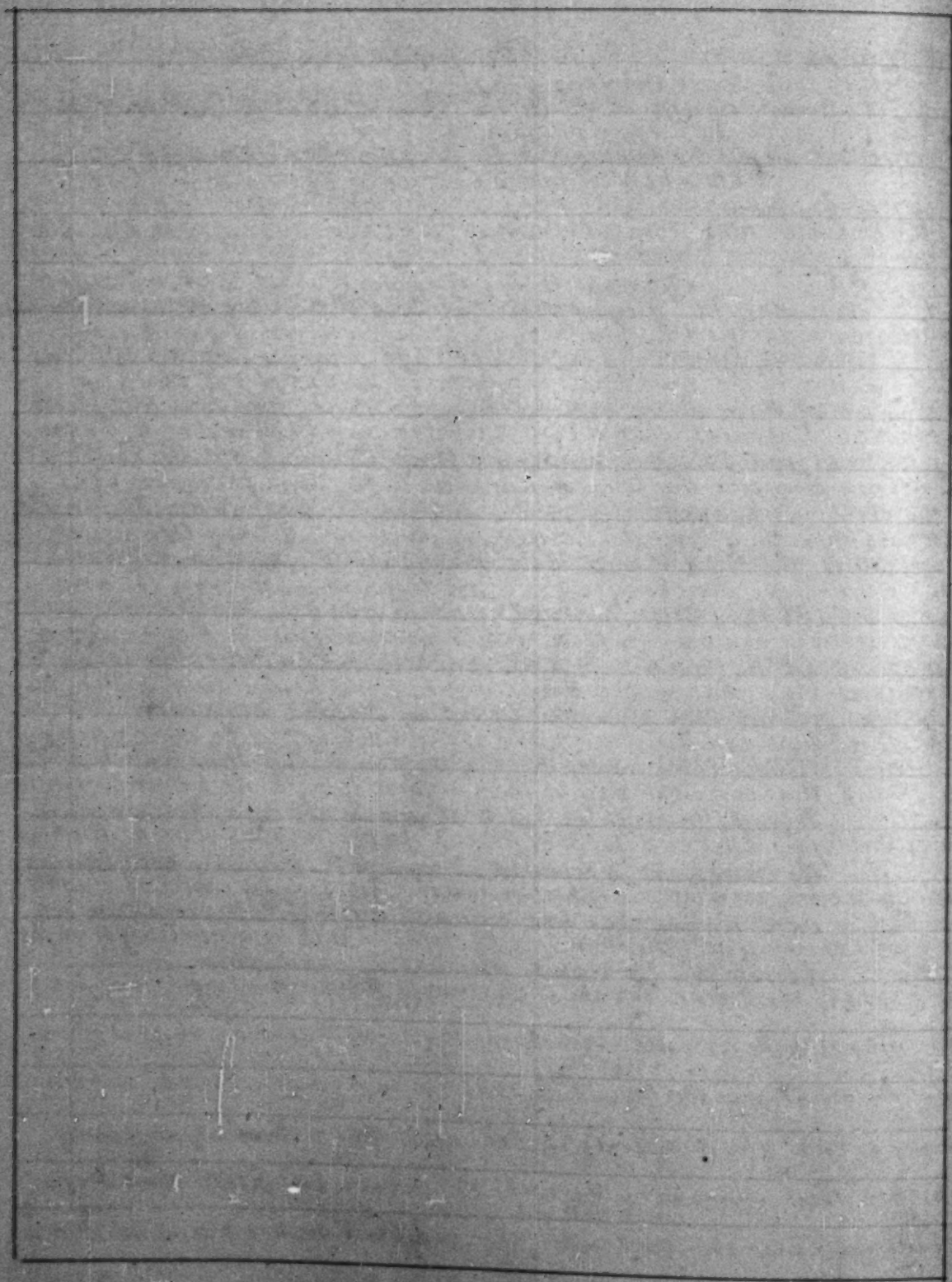
So Carolina

In August Term 1766

A Memorandum wrote by M^r Egan of what he saw pass in Court whilst he happened to be attending there upon some affairs of his own

On Thursday 14th August 1766 The Jury M^{rs} Gibbs Foreman brought in a Verdict in favor The Chief Justice recollected the Writ to be one of them signed against his consent when he was well and not absent and I suppose contrary to Act of Parliament, and ordered the Clerk not to record it And the Provost Marshall at his Peril not to execute it. the Clerk turned to the Justices M^r Boyley and M^r Smith and received their Order to record it, which was done the Chief Justice then ordered the Clerk to Register or not down his Order, the other Justices ordered him peremptorily not to Register his Order.

Queⁿ. Whose Clerk is the Clerk of the Crown and Pleas, and will the Provost Marshall at his peril execute the said Judgement tho the Stamp act is repealed, it cannot be that any proceedings done during that time contrary to Act of Parliament are confirmed by its repeal - the contrary is certain.



B P R O B J South Carolina Vol 21

N 44 (In the 30th Dec of 19th Sept 1766)

Deposition of James O'Brien of Charles Town Gent^l

South Carolina) James O'Brien of Charles Town Gentleman. One of the

Es

Attorneys of His Majesty's Court of Common Pleas vol-

untarily maketh oath that being one of the domestics of his Honor the Chief Justice of the said Province when the Stamp Act took place in America. Deponent upon a visit with the said Chief Justice to Roger Pinckney Esquire the Provost Marshal of the said Province. His Honors then Chief Confid^t in paying obedience to said Act. heard the said Roger Pinckney (after some discourse respecting the said Act) declare himself in these words as nearly as the Deponent can recollect (Viz^t) That should any Attorney come to him with a Writ, tho^t the Chief Justice's Name and seal of the court should be thereto without a Stamp, that he would pay no more regard to such Writ than he would to a Cabbage Leaf or a piece of blank paper, adding that he had as much money as would support himself and family until it was decided one way or the other, would run no risk of meddling with the Dignity of the Crown nor the Authority of Parliament, and that was he subject to be arrested upon such Writ, well knowing that it could not be the Kings Writ pending that Act, he would not value shooting any person who dare serve it, nor expect any redress against any person that would serve himself the same way Saith that Depo-
nent was also in Court, when the said Chief Justice made a Notes-
taken

lation to the Effect of that certified by M^r. Bennet Oldham, which
 hath perused and read and saith that all the matters by him set
 forth therein respecting one Francis Stokes are true this Deponent
 being the attorney concerned for said Stokes as the said Oldham
 therein mentions Depoeth that this deponent doth not make this
 Affidavit through favor or affection for the said Chief Justice nor
 thro Enmity or any manner of dislike to the said M^r. Pinckney
 but merely for the sake of truth so far as deponents knowledge and
 recollection. he this Deponent being called upon for that purpose

SWORN before me at the request of the Chief Justice of the said
 Province at Charles Town this Fifteenth day of September One
 thousand seven hundred and Sixty Six

James O'Brien

C. G. Montagu

B. P. R. O. B. 2 South Carolina Vol 21

N. 45 (In the Gov^rs letter of 19th Sept 1766)

M^r Oldham's Declaration

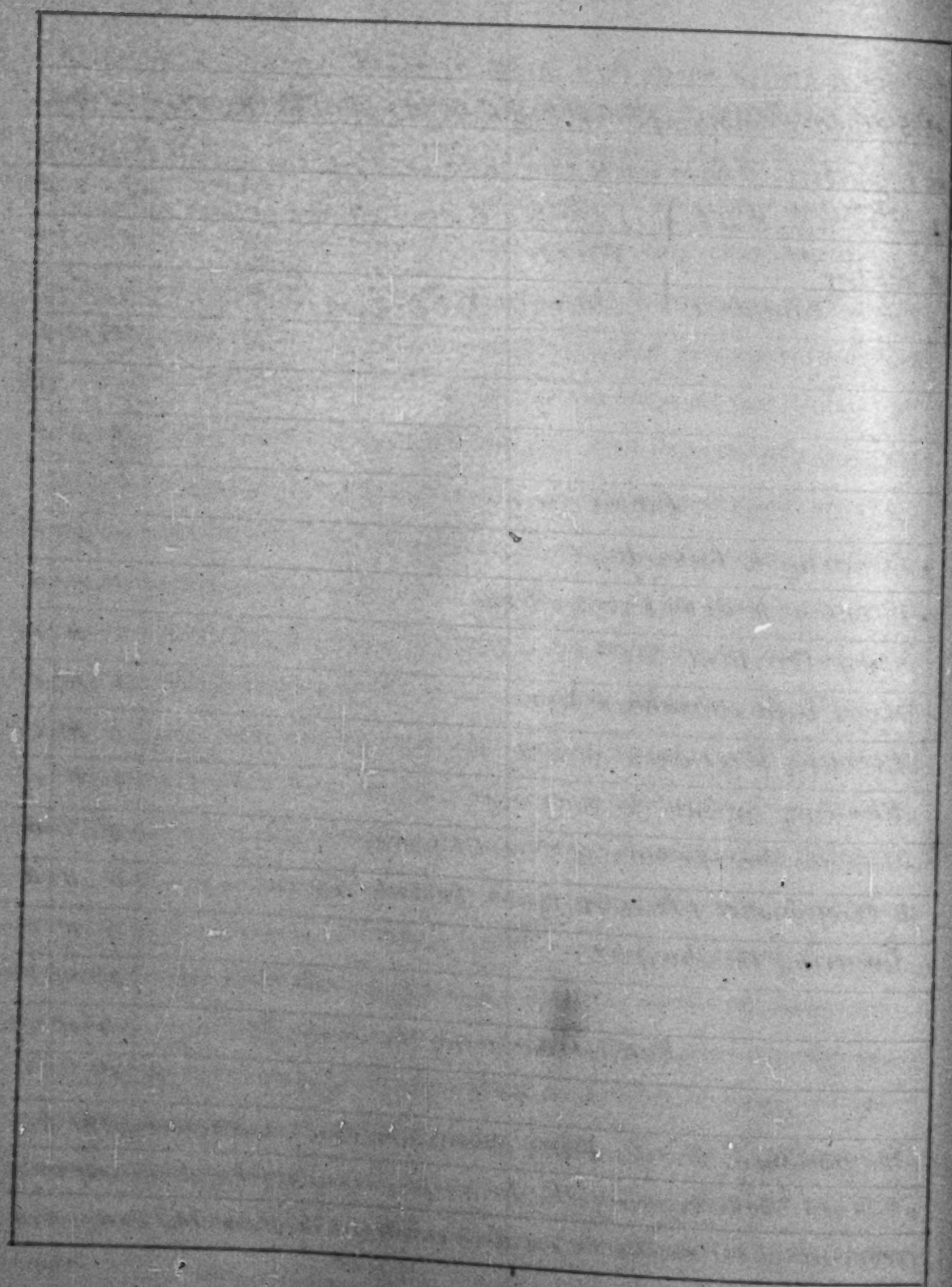
As M^r Roger Pinckney Provost-Marshal of the Province of S^c Carolina has according to the Information which I have received, thought proper to deny that after the opening of the Courts of Law in that Province by the Assistant Judges (the Chief Justice dissenting to and openly protesting against such a procedure as the fate of the Stamp Act was not then known) he ever declared he would not execute any Writ tested in the name of the Chief Justice or indeed any Writ not upon stamped paper, whilst the Stamp Act should be depending. Now at the request of and in Justice to His Honor the Chief who has asserted the direct contrary I cannot avoid protesting that I have more than than once heard M^r Pinckney make such declaration. And I was very much surprised on the 17th of April last on which day I dined with his Honor to see M^r James O'Brien Attorney of the Court of Common Pleas, enter and move for the discharge of one Francis Stokes then in the Custody of the Provost-Marshal, by Virtue of a Writ which had been tested in the name of the Chief Justice (after his Honor had entered his protest against any Officer daring to do so) and which was not stamped. I say I was surprised because I then considered that the Provost-Marshal had acted contrary to his declaration, in which I thought confidence might have been placed, and considering that the man had been hardly dealt by, and that it was impossible

(for)

for him to give Bail because the defendant was a stranger and a transient person in the province and because a Bail Bond was an enumerated article requiring a stamp, and because no stamp paper was then to be had (and if such a thing could have been procured, it was thought no unstamped Bond would have been taken tho' the man had been arrested on an unstamped Writ) I did voluntarily without fee stand up in support of M^r O'Brien's motion and use such arguments as I was master of to obtain its end and accordingly an order for the discharge of Stokes was obtained which was lodged in the Provost Marshal's office, but the Plaintiffs Attorney suspecting what was in agitation, had contrived it so, that just before and exactly at, or immediately after the time of lodging it an order by the Assistant Judges for the detention of the man, non obstante what the Ch Justice might do, was also entered with the Provost Marshal who choosing to obey them rather than the Chief, Stokes was detained for a considerable time and at last obtained his discharge by charitable contributions. Then it was that (tho' his order had no effect) the Chief Justice was accused by his enemies of having acted inconsistently with himself and threatened with having incurred a penalty under the Stamp Act for having signed the order upon unstamped paper, such an order being as a very eminent man of the Law chose confidently to assert, an article expressly directed to be upon stamped paper. But the Gentleman did not seem thoroughly to understand the Act, which to my apprehension spoke plainly of orders of a Court and could not be construed

extend to orders made by a Judge at his Chambers such orders to
this day are unstamped in England the stamps have been in vogue
so long there I have wrote this much in compliance with the Chief
Justice's request whom it affects to be contradicted in ever so trivial
a matter

B Oldham



South Carolina Fees charged upon a Writ of Inquiry Executed

		£	s	d
Ward & Leger vs John Campbell	Judges fees	1	7	10
	Clocks fees	1	15	3
	Attorneys £ ^s	4	16	
		7	19	1
				5
		39	15	5
Extra fees				
Attending to Enter Writ		0	10	0
Attending to Enter & receive Exon		1	0	0
Filing Warrant		0	5	0
Venue and Marshal's fees		1	10	0
Attending to get Exon sealed		0	10	0
Attending ex cu ^l for Judgement		1	0	0
Marshal's fees for mileage 1 ^s @ 1/3 p ^l mile		4	7	6
To Chief Justice & Clerk on Motion for Judg ^t Ex Cu ^d		0	11	3
Swearing the Jury		4	10	0
		16	3	9
		53	19	2
Deduct Swearing the Jury		4	10	0
		£	49	9 2

The Assistant Judges being unanimous in disallowing the fee charged for swearing the Jury upon every Writ of Enquiry on account of the oaths being administered to them but once every
(term)

Term that they shall try all Enquiries which shall come before them
the said Dec is therefore struck out of the above Bill which I tax at
£49. 9. 2 Currency

13th September 1766.

Robert Tringle

14th September 1766. Then M^r Campbell Clerk of the Court of Common
Pleas bro^d me the above acc^t to shew how the assis^t Judges. Strike out the
Dees payable to the Chief Justice and Clerk and observed that they
would strike out the Dec payable to the Ch. Justice and Clerk also
upon the Venire as one Venire only. Issues to Summon a Jury for
the business for the business of the whole Town. Which is humbly
submitted

Chas. Skinner Ch. Justice

Robertson & Baillie
&
Jacobus Gaillard

Aug^t Term 1760

Bill on W^h Inquiry executed

Attorney's Dees	£4. 16. 0
Judges do	1. 17. 10
Clerks do	1. 15. 3
	<u>£7. 19. 1</u>
	5
	39. 15. 5
Venire	1. 2. 6
Marshals Return of w ^h Inquiry	0. 7. 6
Swearing Jury	4. 10. 0
Attending Marshal w ^h Writ	0. 10. 0
D ^o with Execution	0. 10. 0
Marshals Dees	5. 11. 3
	<u>£52. 6. 8</u>

I tax this Bill at fifty two pounds six shillings and eight
pence Currency

Robert Tringle

B. P. R. O. South Carolina B. 2 Vol 21

N 46 (In the Gov^rs letter 19th Sept 1766)

A List or Table of all Fees allowed to, or taken by the Clerk of His Majesty's Court of Common Pleas in the said Province made out in obedience to a Requisition of the Hon^{ble} William Bull Esq Lieut Gov^r and Comm^r in Chief in and over the Province afores^d dated Council Chamber 11 December 1764

	Foot money	Currency
1 For Writing every Writ	1	6
2 For filing every paper or pleading	1	5
3 For copying or recording every paper or pleading & copy sheet	6	2 6
4 For entering every order of Court & Copy being a rule of course	7½	3 1½
5 For every Search in the records	7½	3 1½
6 For signing every Judgement	2 6	12 6
7 For attend ^g drawing a Jury at a Special Court	5	1 5 0
8 To each days attendance at a Special Court	5	1 5 0
9 For making out Bail Fees & attend ^g every Special Bail	2 6	12 6
10 For receiv ^g Money in Court & paying it out again w th fee		
11 For attendance on every cause tried	2 6	12 6
12 For swearing every witness on every oath Admin ^d in Court	6	2 6
13 For entering the request of every witness demand ^g his Expens ^s	6	2 6
14 For every Certificate of such demand	6	2 6
15 For reading every paper	7½	3 1½
16 For entering every Verdict	1	6

(7)

17	For the Admission of every Attorney	£	1		5	
18	For the Venue in every issuable Cause			1		5
19	For entering every Motion where an Order ensues			1	3	6 3
20	For entering every Special rule			1	3	6 3
21	For every Oath administered out of Court			1	3	6 3
22	For attending the Judges Chambers in the Vac ⁿ on the Hearing any Motion or other Business on Notice Given			2	6	12 6

In the above table of Fees from 1-14 inclusive are agreeable to the Act of 1743 & were several of them lower than those which were given by the Law of 1698 the Act of 1743 having made no further provision for the Clerk of the Com^o Pleas. N^o 15 is taken under that of 1736 & is the same which by this very Act of 1743 is given to the Clerk of the Crown & also for the like service performed in the Court of General Sessions. N^o 16 is taken under the Law of 1698 by which a Fee is also given for N^{os} 17 & 18 but in this last mentioned Law the Chief Justice and Clerks Fees are so blended together that in several of the Articles it is impossible at this distance of time to distinguish how the Legislature intended they should be allotted. N^{os} 19 to 22 are taken and allowed in the Taxation of Costs as a quantum meruit for performing the several services therein mentioned. There are many other pieces of Business done by the Clerk for which there never has been any allowance made in any of the Fee Bills and for which no Fee has ever been taken, for as the practice of the courts in Carolina is constantly approaching nearer to that of His Majesty's Courts at Westminster new pieces of duty thereby frequently become incumbent (upon)

upon the Clerk for which he as yet receives no compensation what
 soever one particular hardship which he labours under is his
 being obliged to seal not only, all Testimonials Renunciations of
 Ower Writs and every other process of the Court without Fee or Re-
 ward, but also to find materials for that purpose at his own ex-
 pence, having no manner of allowance for any kind of Stationery
 Ware which in the course of his business is a very heavy Article By
 the act of Queen Anne the difference between proclamation money and
 Sterling is settled at £33. 6. 8. per cent^m but by the 3rd act of 1743.
 Public officers are to receive their Fees in current money at the rate
 of 5/ currency for 1/ Proclamation which makes the difference 40
 Per cent The above is a copy of the Table of Fees given in to his Honor
 the Lieut. Gov^r by the Clerk of the Common Treas on the 17th of Dec^r 1764
 specifying by what Authority the Fees allowed to and taken by
 the said Clerk have been established to which he begs leave to sub-
 join the following Remark. Had the 3rd Bill of 1743 provided for
 all the Business done by the several Officers therein mentioned which
 however it does not do and had also allowed them a reasonable
 Compensation for performing the duties of their respective Stations
 against which it would seem there is a strong presumption, from
 its being passed with a saving clause and never having received
 the Royal Assent tho' repeatedly solicited, yet it is humbly appre-
 hended that even then some further addition to the income of
 Public Officers will now be thought equitable if it is considered
 (how)

how much most of the necessaries of life have increased in price in
Charles Town since the Year 1743

B P R O A & H I Vol. 223. p. 27

Witchell 25th Oct. 1766

Lord Cha^s G. Montagu

(N^o 2)

My Lord

I am Commanded by the King to acquaint you that His Majesty has been pleased to receive very graciously the dutifull and Affectionate address of his Loyal Province of South Carolina. His Majesty feels with great Satisfaction that his American Subjects in general have shewn the sincerest thankfulness and Gratitude for his Paternal goodness and Condescension and for the tender Regard and Consideration of His Parliament; and His Majesty rests assured that His Province of South Carolina as well as all His other American Provinces will ever merit his most Paternal Affection

I have at the same time the Honour of transmitting His Majestys Approbation in Council of the Conduct of W^m Bull Esq^r Lieut Gov^r of South Carolina in Support of Dougall Campbell Esq^r Clerk of the Common Pleas, with the remission of the fine imposed upon W^m Campbell by the Assembly of that Province in consequence of his refusal to enter up a Judgment on unstamped Paper while it was repugnant to a British Act of

of Parliament.

The latest Accounts from the most Southern Provinces giving us reason to dread some disturbances among the Indians particularly the Creeks and Choctaws, Your Lordship cannot be too active and vigilant in taking every method which can tend to restore Harmony and secure peace with all Indians in Your Province.

The Licentiousness and Ill behaviour of Indian Traders are in fact the cause of all the Mischiefs which the Savages are stirred up to Act, you cannot therefore be too cautious in granting or renewing Licenses, that if possible none but those whose good Conduct and Prudence may be relied upon, may have leave for the future to go among them.

If this was a general maxim We should find the Disposition of the Indians very different.

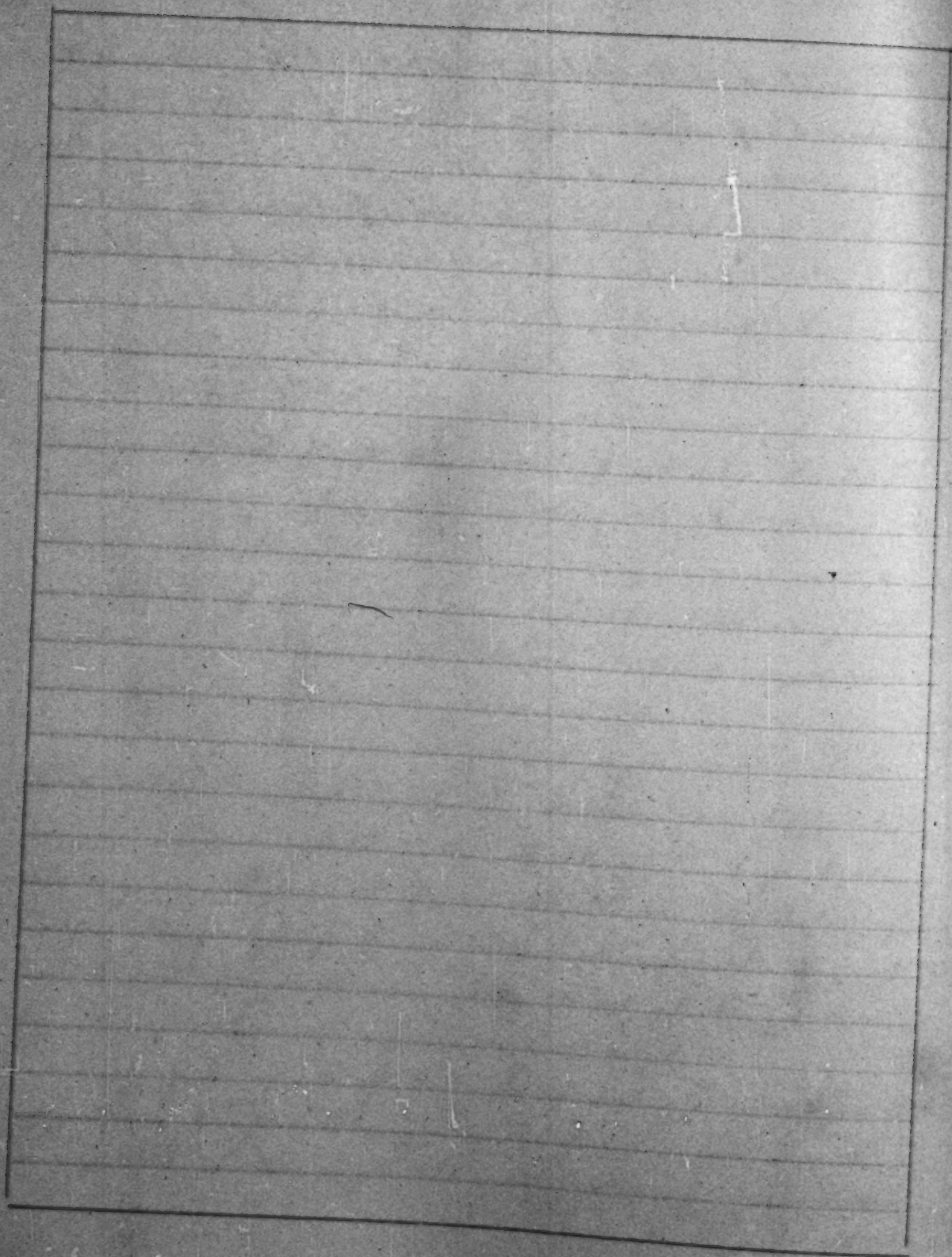
Your short Letter of the 12th August enclosing a Memorial from Mr Hume Storekeeper of Ordnance praying for a Compensation for the time of his Service, prior to the Appointment of his Salary by the Province has just been received.

In your future Dispatches I would recommend to You the giving every separate subject a separate Letter, and the numbering of each Letter, this

this method will contribute much to the order and
Despatch of Business

I am &c

Shelburne



B P R O South Carolina B T Vol 21 A 48

Charles Town Nov^r 14 1766

My Lords

I have the Honour of transmitting to
your Lordships the last Quarterly Accounts of the
Entries & Clearances of Vessels from this Port

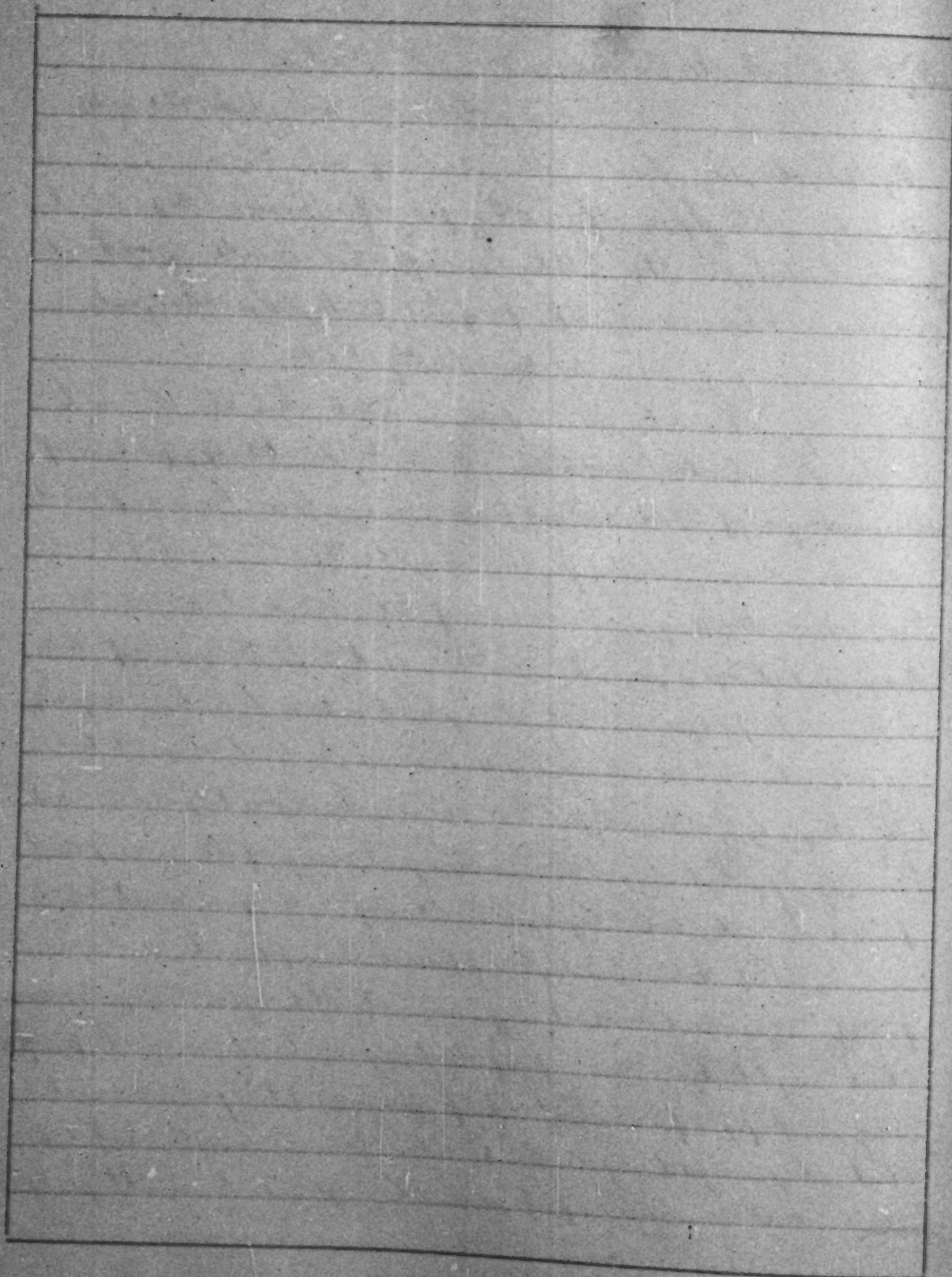
I am My Lords

Your Obedient Humble Servant

To the R^t Honble the Lords C. G. Montagu
Commissioners of Trade & Plantations

Rec^d Dec^r 31 1766

Read Jan^y 2 1767



B P R O A & A I Vol 323

p. 321

(16th November 1766)

To The Right Hon^{ble} The Earl of Shelburne His
Majesty's Principal of State for the Southern Department
The Memorial of Cha^s Farth Esq Agent
in Behalf of His Majesty's Subjects in
South Carolina.

Humbly Sheweth

That Charles Skinner Esq Chief Justice of
His Majesty's Province of South Carolina having present-
ed to His Excellency The Right Hon^{ble} Lord Cha^s
Greville Montagu Governor of the said Province a
Representation against the Conduct & Behaviour of his
Assistant Judges Robert Pringle Rawlins Lowndes Benjam-
in Smith & Daniel O'Leary Esquires to be transmitted to
his Majesty's Ministry. The said Assistant Judges most
humbly applied to His Excellency, having full & competent
Jurisdiction to take Cognizance thereof & to give suitable Re-
dress, that he would be pleased to appoint a Time
for hearing and considering all the Charges & Allegations
that might have been preferred against them, and pray-
ing a copy of the sd Chief Justices Charge & Accusation;
that they might agreeable to the known & establish'd fun-
damental Principles of Justice throughout his Majesty's
Dominions

Dominions be inform'd of the Nature of the Accusations against them and be prepared to give in their answer if innocent, in Defence & Vindication of their Characters & Conduct, both which his Excellency has thought fit to decline, & has transmitted to England the said Chief Justices Representation.

That the Assistant Judges, in their private Capacities of the highest Honor & Probity, and in their public Characters of great Consideration from the Importance of the office they sustain under the Crown, not conscious of having done anything, either as Men or Magistrates, to subject them to public Censure or Complaint, feel the utmost Impatience to have their Conduct scrutinized, that if ought appear against them unsuitable to the Duty of their Office, Justice may be done upon them & the public released from the Danger of their longer Continuance, on the other Hand if the Charge can not be made good that they may be acquitted from the imputation and calumny thrown upon them; it being not only to themselves of the first Importance, but to the whole People of the Province, (whose principal Officers of Justice, as such, are unhappily labouring under an Accusation) of the utmost Consequence, that an Enquiry the most speedy & early

early may be had thereupon

That the ^{sd} Assistant Judges, unable to obtain a copy of the Charge against them, find it not in their Power to transmit any thing to be offer'd to His Majesty's Ministers in Vindication & Defence of themselves against a Charge, the Enquiry into which His Excellency has publicly declared to them to be of great Importance, but the Assistant Judges have that Confidence in the wisdom uprightness & Justice of His Majesty's Ministers, that they will not, they cannot proceed ex parte on a Complaint of so high a Nature, the Consequence whereof must be very great Delay, to them, as private Men cruel to the last Degree, as publick Ministers of Justice, dangerous to the Community.

That the Assistant Judges are far from declining or wishing to decline a fair, candid, and impartial Examination of their Conduct at any Tribunal whatsoever or wheresoever tho' perhaps at a distant Tribunal Truth might not be so easily investigated, nor Evidence so fully or substantially produced, and therefore under the present Circumstances of their Case, Your Memorialist in Behalf of them, and of the Inhabitants in general of ye said Province begs Leave to request, that as His Majesty from a tender Regard
to

to the Situation of his distant Subjects in America has
vested in his Representative, the Governor for y^e time
being full Power & Authority to hear proceed & Deter-
mine upon all Complaints that may arise at any
time against any Officer judicial or ministerial that
may be under him in Authority, whereby Justice may
be speedily done or obtained, and great Expence and
Delay prevented, Your Lordship will be pleased to remit
the Accusation of the said Chief Justice unto His
Excellency the Governor to be determined before him &
the Council, who are y^e proper Jurisdiction to deter-
mine Matters of this Sort in the first Instance

And y^e Memorialist &c.

Chas Garth

New Bond Street

Nov: 11th 1766

B. P. R. O. A. & A. I. Vol 223 p 305

(25th November 1711)

To the Kings most Excellent Majesty

The Humble Petition of the Commons House
of Assembly of South Carolina

May it please your Majesty

We your Majestys dutiful and loyal Subjects
the Representatives of the Inhabitants of your Province of
South Carolina convinced, by uninterrupted Experience of
your Majestys paternal care and tender Regard for the
Welfare and Prosperity of all your faithfull Subjects, how
remote soever from your sacred Person, and that to pre-
cure Redress of Grievances, it is only requisite to make
them known to our most Gracious Sovereign, by Leave, with
all Humility and Veneration, to lay before your Majesty
our Distresses occasioned by a late Act of Parliament
(passed without Notice to your Petitioners) which prohibits the
Issuing Paper Currency in the Colonies as legal Tender.

These will evidently appear from the following Facts
and observations, which we therefore most Humbly submit
to your Majesty's Consideration. That this Province is not
furnished with a sufficient Quantity of Gold and Silver,
to answer its Demand for Money, the most part of
what we get which is foreign Coin and not Lawful
Money

Money being annually exported to Great Britain to pay the British Merchants, This would be the case if the Quantity Imported was much greater than it is, and will be so whilst the Balance of our Trade is in Favour of the Mother Country, which must not only continue, but Increase with our Demand for her Manufactures and Exports.

That it being absolutely necessary to Establish a Currency, as a Medium of Trade, an Act of the General Assembly of this Province was passed 20th of August 1731. for stamping and issuing Bills to the Amount of One Hundred and Six Thousand and five Hundred pounds. Equal to fifteen Thousand and Two Hundred and fourteen Pounds five shillings and Eight pence halfpenny Sterling, and Declaring the Same to be a Tender in Law in all Payments. The said Bills were accordingly issued and afterwards reprinted under an Act passed in the Year of our Lord 1748 and are the only Lawful Paper Currency that this Province hath had since that Period.

That altho no Fund was by that Act Established for sinking it yet the Faith and Honour of The Province being considered as pledged for Security to the Possessors of it, the same hath obtained great credit, inasmuch that it passed Readily in the Neighbouring Provinces of Georgia

Georgia and North Carolina who prefer it to their own and give large Premium to obtain it, from which no Inconveniencies have Ever arisen, as it hath never Depreciated wherein it materially differs from the Paper Bills of Credit issued in many of the Northern Colonies and had its value been doubted the Legislature would certainly have Established a permanent Fund for its Security; But the Credit of our Currency hath increased with the flourishing Condition of the Province, which the better enables us to support it.

That many of our Bills being worn out and destroyed and a Number of them circulating in the Provinces abovementioned it is computed that there is not with us above Seventy Thousand pounds Equal to Ten Thousand Pounds Sterling.

That our Demand for Specie or a Currency as a Medium of Trade having increased in proportion to our Trade with the Mother Country. Fifty Thousand Pounds Sterling in Paper Currency, is not so much, comparing the Trade Number of Inhabitants and circumstances of the Province at Present, with those of the Year 1781 as fifteen Thousand Pounds Sterling was then, and would scarcely be adequate to our Want of Money, our Exports; upon a moderate

Computation

computation, amounting at prime cost here, to at least
 Three Hundred and Fifty Thousand Pounds Sterling p
 Annum and our Annual Taxes for the Support of
 your Majesty's Government here having in several years
 been more than Double the Value of our Legal Currency.

That in the late War between the Year 1755
 and 1760, this Province Granted Aids to the Crown be-
 sides Defraying the Annual Expenses of our Govern-
 ment to the Amount of Seven Hundred and four
 Thousand five Hundred and Ninety Three Pounds two
 Shillings and five pence Equal to One Hundred Thousand
 Six Hundred and fifty Six Pounds, three Shillings and
 Two pence half penny Sterling. For this Purpose Publick
 Orders were issued and th^t there was in actual circu-
 lation to the Amount of Eighty Thousand Pounds Ster-
 ling of those Orders and Tax Certificates at a Time
 no Injury happen'd therefrom to any Individual nor was
 our Exchange in the least affected thereby and the
 greatest Quantity of Goods was Imported from Great
 Britain when the Greatest Number of those Orders and
 Certificates was circulating. Th^t not legal Tender
 they had as much credit and passed as freely because
 this Province has always observed the utmost punctual-
 ity in calling in and sinking its Orders and Certificates
 agreeable

agreeable to the Tenor of the Laws by which they were issued and they might readily be exchanged for it. But since the Sinking those Orders the Want of Money hath been and is most sensibly felt throughout the Province.

That from the small Amount of Paper Currency any one considerable Merchant or Money Lender may get all in the Province into his Possession, so that the Person of every Man here would then be Subject to Imprisonment and his Estate however Valuable to Signure at the Mercy of a Single Creditor and Sale at his Price for the most inconsiderable Debt, This Diomal Scene must increase as the quantity of our Legal Tender Decreases by Time which alone would in a few Years put an End to all now Existing That the Consequences of this Act of Parliament will not only be fatal to the Province but materially affect the Commercial Interest of Great Britain the Importation of whose Manufactures must necessarily decrease with a Decrease of our Ability to purchase them, And the Limiting our Paper Currency within its present very narrow Bounds will prevent not by Law but from General Convenience and Consent our Exporting Specie to the Mother Country for a Medium of Trade, whilst Trade is carried on

on this must be, and if we have not a Paper Currency or a sufficient Quantity of it We must have Specie and if our Exports exclusive of Specie will not pay for our Imports from Great Britain and We keep our Specie so much the less of British Manufactures must We Import because the Less able to pay for them. This Retention of Specie may also Delay payment of Debts already due to the British Merchants till they can be Discharged with our Commodities and our Inability to purchase all the British Manufactures We have occasion for may oblige us to Manufacture partly for our Selves, an Event to which Nothing but Necessity could compel us as it is not our Inclination nor for the Interest of our Mother Country that We should interfere with her in that Respect.

That when it is found practicable for this Province to procure and keep here without Prejudice to Great Britain Gold and Silver sufficient to satisfy our Occasions for money the Necessity of a Paper Currency will of course cease. But of this there is not a Present the most distant Prospect and if it ever should happen it must be from some other Cause than the Restrictions of the late Act. And as our Currency would then become unnecessary and useless it could not

not Prejudice the British Merchants Whilst our Specie is chiefly Exported to Great Britain We only can possibly suffer from a Large Emission of Paper Currency. But this We do not fear, Having felt no ill Effects from what has issued without the Actual Establishment of a Fund for Sinking it or any Limitation of its Continuance. We are assured that many great Advantages would arise both to us and Great Britain from the Emission of the Quantity wanted upon a proper Fund for its Support and that We would readily Establish as well as a Fund for Support of our Present Currency if we might be so happy as to Regain the Liberty which We till lately enjoyed and never abused.

Your Petitioners therefore confiding in Your Majesty for Protection and Support against the Dangers to which they are Exposed as above Manifested most Humbly pray that your Majesty will be graciously pleased to Recommend to your Parliament a Repeal of that part of the late Act which prohibits the issuing in the Colonies any Paper Currency as Legal Tender in so far as it restrains this Province from so doing.

And that your Majesty will be also graciously pleased to instruct your Governor to assent to an Act of Assembly for Creating Paper Currency as legal Tender to

to the Amount of Fifty Thousand Pounds Sterling in
 Value upon the Credit of proper Funds for supporting
 it and our Present Currency or pursue such other
 salutary Measures for securing the Liberties and Prop-
 erties of your People in this Province and the Ad-
 vancement of our Trade with great Britain, as to your
 Majesty so your Royal Wisdom and Justice shall
 seem meet

And your Petitioners as in Duty Bound
 will ever Pray

In the Commons House of Assembly
 the 25th Day of November 1766

By Order of the House
 P. Manigault

B. P. R. O. A. V. H. I. Vol 223 325

South Carolina Charles Town Dec^r 8th 1766

My Lord

I had the Honor of your Lordships Letter, dated the Ninth of August, together with his Majesty's additional Instructions, agreeable to which I shall take care to regulate my conduct.

In consequence of a Letter I received some time ago, from the Lords of Trade and Plantations, I send you a List of the Exports from this Port, since the Year 1744. Hemp within a few Years has been Planted in several parts of this Province, and has been found to grow very well, the Silk Manufacture here increases very much.

I have the Honor of transmitting to you, at the same time a Return of the Number of Militia, and Regular Troops in this Province.

I am

My Lord

Your Obedient

Humble Servant

C. G. Montagu

To Lord Shelburne

(Inclosure)

A

A Return of Regular Troops and Militia in
South Carolina 1766

(Inclosure)

List of Exports from Charles Town in South
Carolina for 20 years past.

B P R O South Carolina B I Vol 21 A 49.

Charles Town Dec: 5th 1766

My Lords.

In consequence of a Letter, I received some time ago from your Lordships, I transmit to you a List of the Exports from this Port from the year 1747, and at the same time a return of the Militia and Regular Troops in this Province

I am

My Lords

Your Obedient

Humble Servants

To the Lords Commissioners
for Trade and Plantations

C. I. Montague

(Inclosure A 50)

List of Exports from the Port of Charles Town
from the Year 1747.

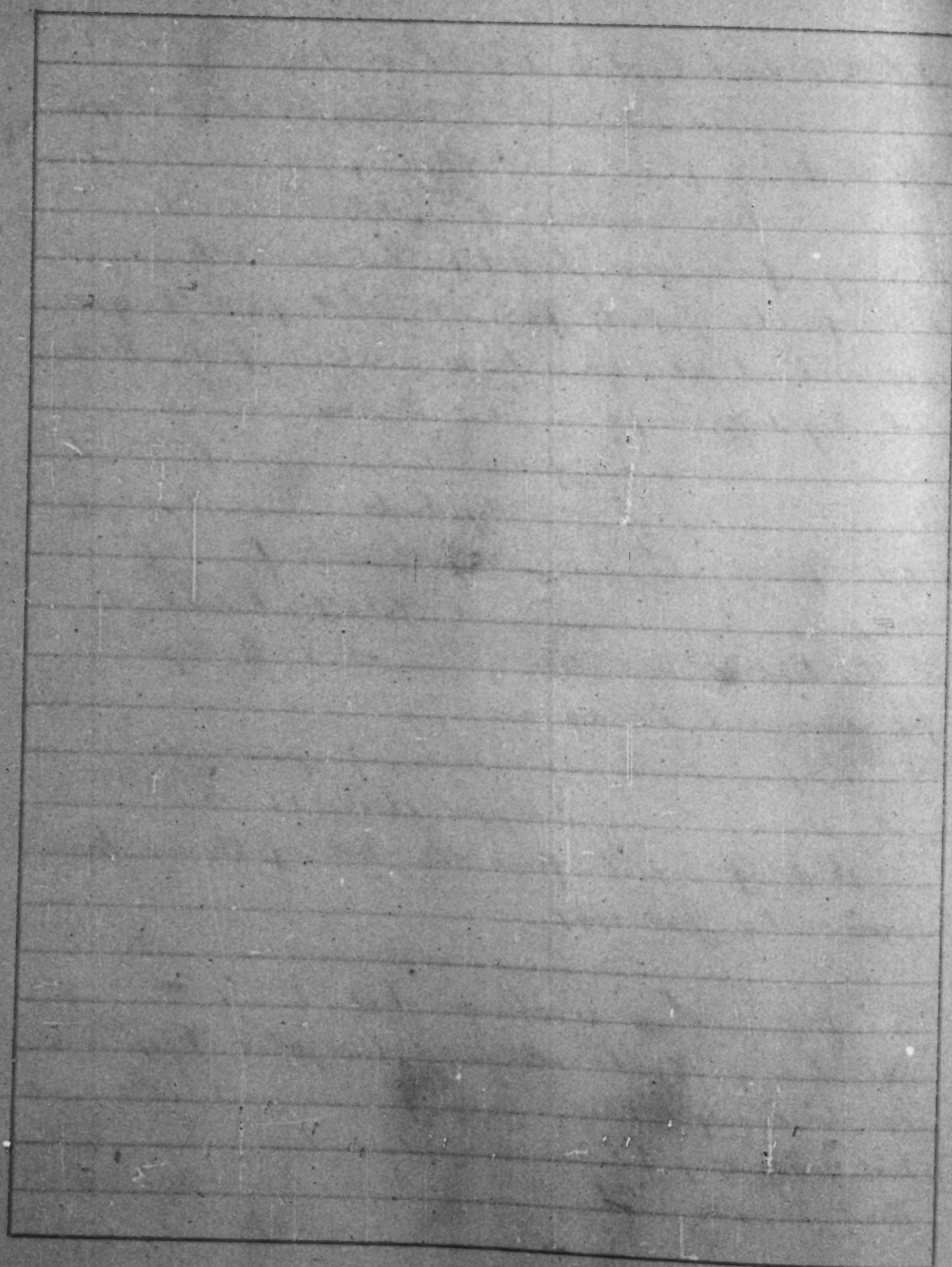
(Inclosure A 51)

Return of the Militia and regular Troops in
South Carolina

Rec^d Janry 29

Read Janry 29

} 1767



Vol 31
1767

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B P R O Journals B I Vol 76.

Whitehall 2nd January 1767.

At a Meeting of His Majesty's Comm^{rs} for Trade & Plantations
Present

Lord Viscount Clare

M^r Jenyns M^r Roberts M^r Dycer

M^r Fitzherbert M^r Robinson

Read a Letter from the Governor of South
Carolina, dated Nov^r 14th 1766, inclosing— Naval Office
Lists of Shipping entered and cleared from Charles
Town in Michaelmas Quarter ended 10th Oct^r 1766.

6th January 1767

Represent^d to His Majesty proposing that Dan-
iel Moore Esq^r may be appointed of the Council in
South Carolina.

29th January 1767

The Secretary laid before the Board several
Letters and papers received by the West India Packets,
the Titles of which are as follows, and the said
Letters and papers were read byt.

Letter

Letter from Lord Cha^s Grenville Montagu, Gov^r of S^c
Carolina, dated Dec^r 8th 1766, transmitting

List of Exports from the Port of Charles Town
from the Year 1747.

Return of Militia and Regular Troops in S^c
Carolina.

17th February 1767

Read a Letter from the Earl of Shelburne, dated
the 13th inst^t inclosing for the Board's Consideration,
two Memorials to His Majesty from the Provinces of
South Carolina and Nova Scotia relative
to the State of the Paper Currency in the said
Colonies and to a Proposal for repealing the Acts of
Parliament by which such paper Currency is restrain'd
from being issued as a legal Tender

Ordered, that the said papers do lye on the
Table.

12th March 1767

The Secretary laid before the Board the fol-
lowing copies of Orders in Council upon Plantation
Business, recd from the Clerk of the Council vizt

copy

Copy of an Order in Council dated Feby 13th 1767
directing that James Murray Esq. be restored to his
Rank in the Council of South Carolina

The following papers received since the Board's
last meeting, were laid before their Lordships and
read v^lgt.

Letter from Lord Charles Grenville Montagu,
Governor of South Carolina, to the Board dated Janry
16th 1767, acquainting their Lordships, that he had is-
sued an Proclamation requiring obedience to be paid
to the Kings Proclamation 1763 respecting the Indians
Lists of Ships and Vessels entered and cleared
at Charles Town in the quarter ending Janry 1st 1767

26th March 1767

Their Lordships then took into Consideration six-
teen Acts passed in the Province of South Carolina
in 1765 and 1766 together with Sir Mathew Lums's Re-
port thereupon, and made some progress therein

26th June 1767

The Secretary laid before the Board the fol-
lowing papers received from the American Colonies, v^lgt.
Letters

Letter from Lord Chas Grenville Montagu Gover-
nor of South Carolina, dated May 12th 1764 relative to
the Suspension of Charles Skinner Esq. Chief Justice of the
said Province, and transmitting two papers on that Subject

9th July 1764

Read an Order of the Lords of the Committee of
Council, dated June 30th 1764, directing Draughts of Ad-
ditional Instructions to the Governors of South Carolina
and Georgia, respecting the Grants made in the former
of those Provinces, of Lands to the Southward of the
River Alatamaha.

Ordered, that Draughts of Additional Instructions
to the Governors of South Carolina and Georgia, con-
formable to the said Order be prepared.

13th July 1764

The Draughts of Additional Instructions to the
Governors of South Carolina and Georgia respecting the
Grants of Lands made by Gov. Borne to the South
of the Alatamaha, having been prepar-
ed, pursuant to order, were approved, and a Representation
to His Majesty, with the latter one, and a Report to
the

the Lords of the Committee of Council with the two former ones, were signed.

21st July 1767

Read a Letter from the Earl of Shelburne, dated July 15th 1767, referring to the Board, for their Report, a Memorial of the Agent of South Carolina, proposing that County Sheriffs may be appointed in lieu of a Provost Marshall, on terms mentioned & for reasons set forth in the said Memorial

Their Lordships upon consideration of the subject matter of the above References, ordered that the Draught of a Letter to the Earl of Shelburne containing the Boards Opinion thereupon be prepared.

22nd July 1767

Read the following Orders of His Majesty in Council.

Order of the King in Council June 26th 1767 directing the Board to prepare the Draught of an Additional Instruction to the Gov^r of S^c Carolina requiring him not to assent for the future to any Law by which the Assembly shall be enlarged or diminished.

ym

was also a like Instruction to the other Govrs in America.

The Draught of Additional Instructions conformable to the said Orders having been prepared, were approved and ordered to be transcribed.

The Draught of a Letter to the Earl of Shelburne, upon the Petition of the Agent of South Carolina, relative to the Office of Provost Marshall having been prepared pursuant to order, was signed.

20th July 1767

The Draught having been transcribed pursuant to order, was signed; as were also Representations to His Majesty with Additional Instructions to the Governors of , and South Carolina, mentioned in the minutes of the 22^d inst.

10th December 1767.

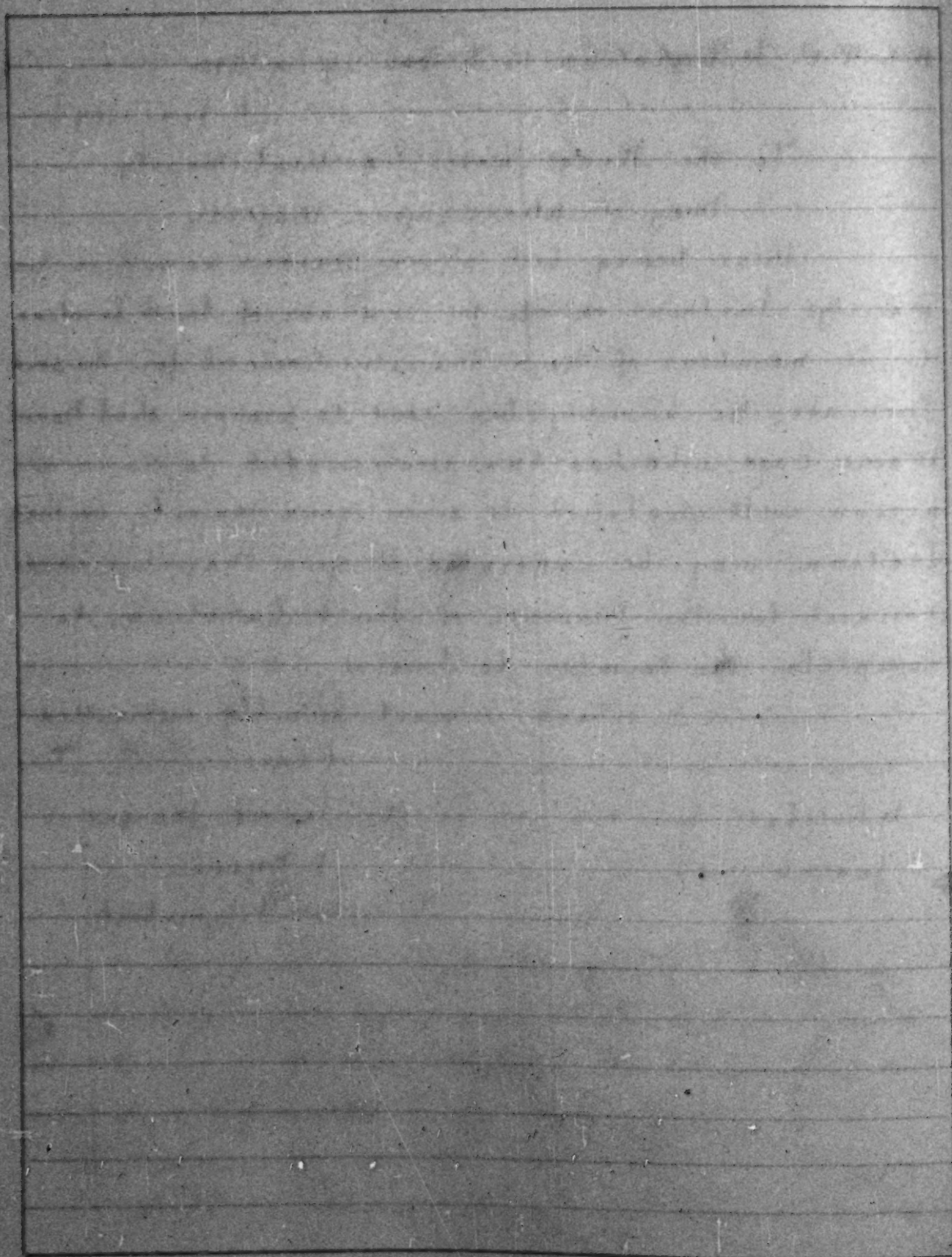
The following Duplicates of Letters to the Earl of Shelburne and of papers therewith transmitted from the Governors of His Majesty's Plantations and others, were laid before the Board vizt

Lists of Ships & Vessels enter'd and clear'd
in

in the Port of Charles Town South Carolina in the
quarter ending at Midsummer 1764

D^o at Michaelmas 1764

.....



B. P. R. O. S^c Carolina B. J. Vol. 29. p. 372.

(6 Jan. 1767.)

To the King's most Excellent Majesty

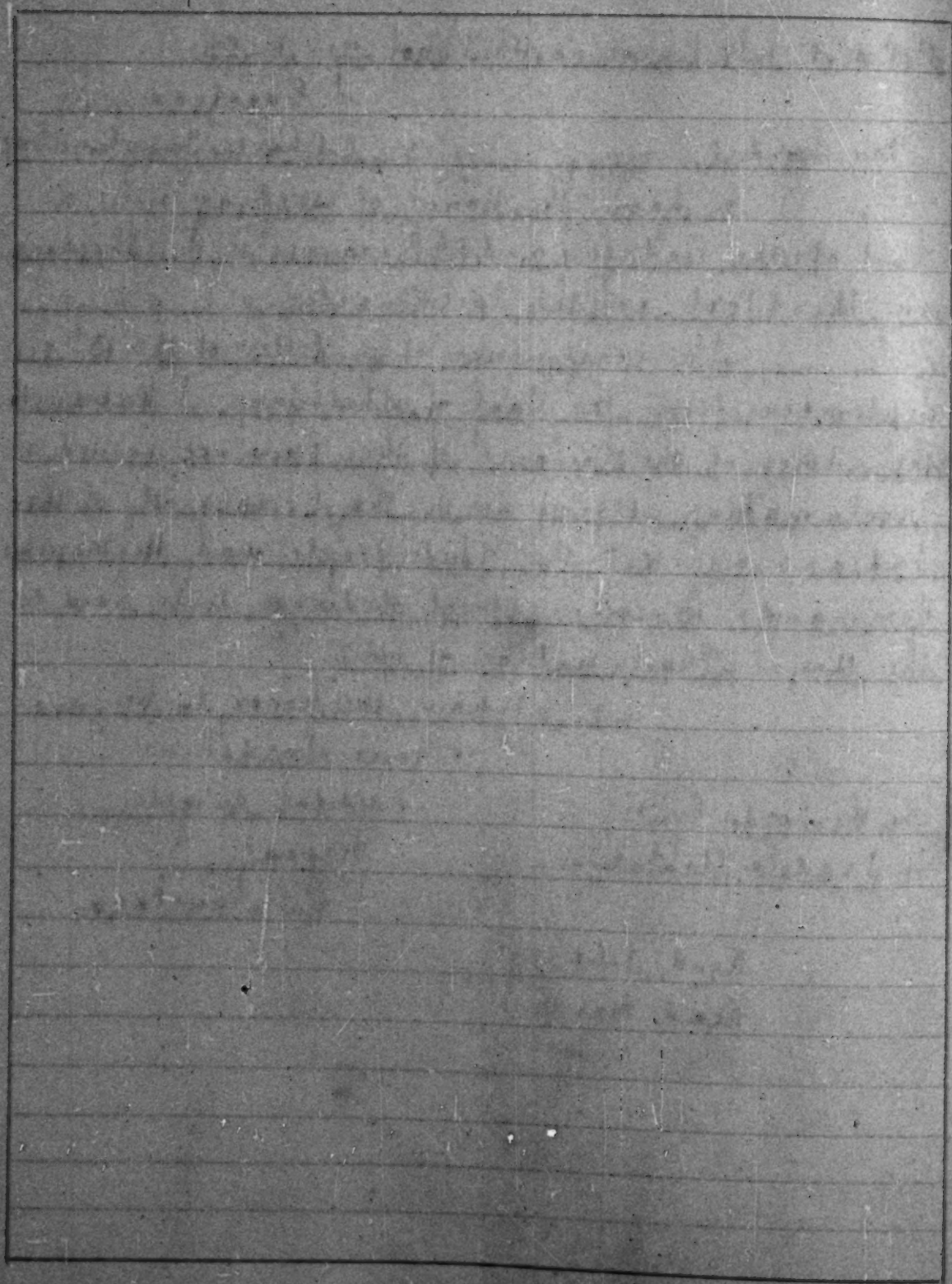
May it please Your Majesty

There being but eleven Persons named in Your Majesty's Instructions to the Governor of South Carolina to be members of Your Majesty's Council for the said Province, We humbly beg leave to propose, that Daniel Moore Esq^r who has been recommended to us as a person well qualified to serve Your Majesty in that Station, may be appointed of your Majesty's said Council for the Province of South Carolina, to complete the Number to Twelve.

Which is most humbly submitted
-Clare

Whitehall }
Jan^y 6th 1767 }

Soame Jennings
J. Dyson
W^m Fitzherbert.



B. P. R. O. S. Carolina B. J. Vol. 21. N. 53.

S. Carolina

My Lord,

Charles Town Jan^y 16th 1767.

I have the Honor of sending you a List of the Entries and Clearances of the Shipping in this Port, in the last Quarter.

In consequence of a letter of the 13th of September from the Earl of Shelburne, I have, with the advice of the Council of this Province issued a Proclamation setting forth the Complaints of the Indians against the White People and His Majesty's commands requiring strict obedience to be paid to the Royal Proclamation of 1763.

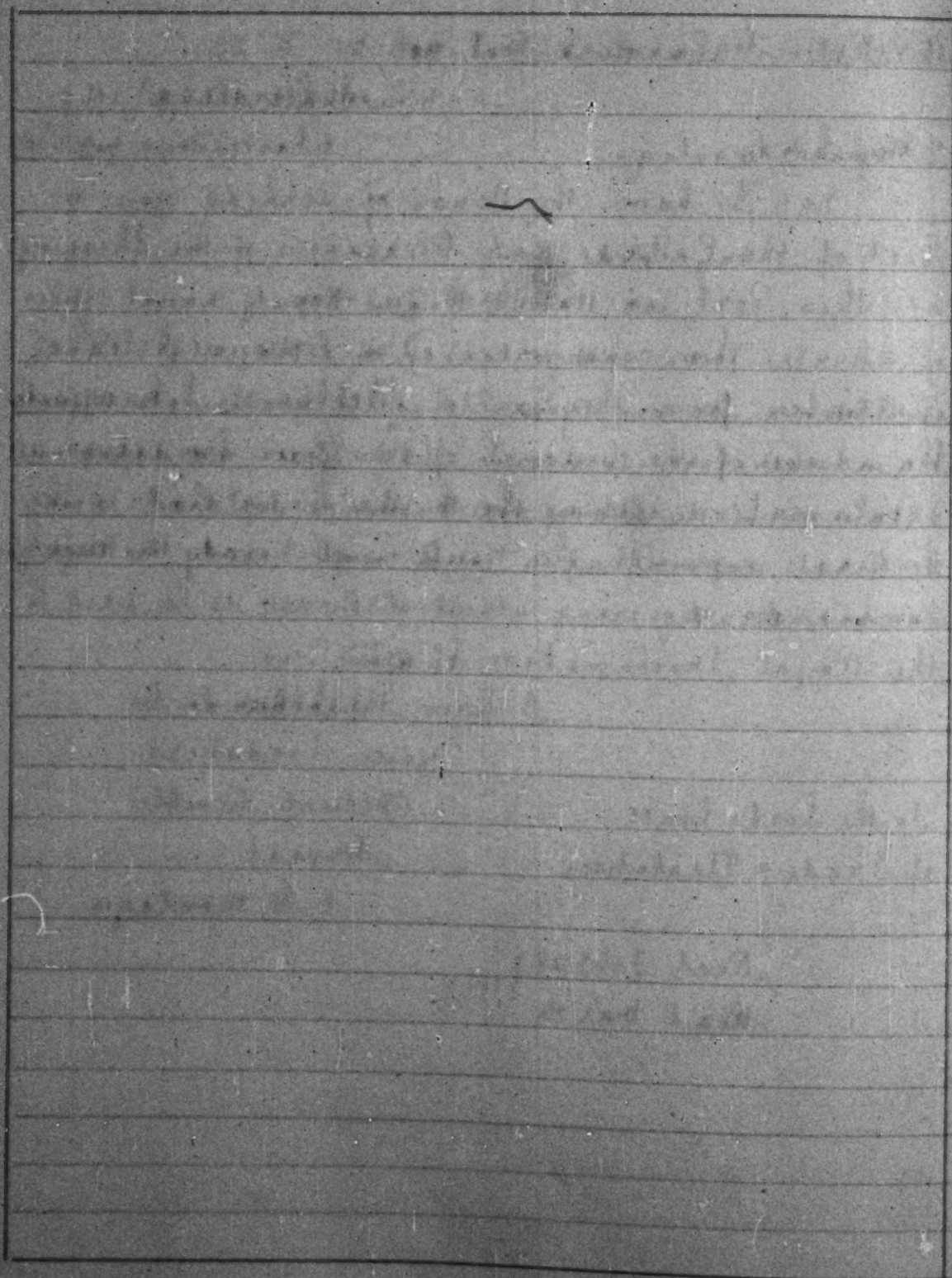
I have the honor to be
Your Lordships

To the Lords Comrs
of Trade & Plantations.

Obedient Humble
Servant

C. G. Montagu

Recd Feb 28 } 1767
Read Mar. 12 }



B. P. R. O. A. & H. J. Vol. 315.

Whitehall Feb^y 3^d 1767.

L^d Chas G. Montagu

(No 5.)

My Lord

Mr Robert Raper, Deputy Naval Officer of Charles Town, has obtained His Majesty's leave of absence for one year, to settle his Private Affairs; I am therefore to desire that your Lordship will allow him to leave the Province for that time, he first appointing a sufficient Deputy to act in his stead.

I am &c

Shelburne.

1

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B. P. R. O. S. Carolina B. J. Vol. 21. N. 52.

Whitehall February 13th 1767.

My Lords,

Several of the Colonies, as well as the Merchants of London, trading to North America, having represented by Petition, previous to an Application to Parliament, the Distresses to which they are reduced for want of a Medium of Commerce, the Scarcity of Gold and Silver Coin current among them, rendering it impossible for them to make Remittances to their Creditors in England, to extend their Trade, or even to pay their Internal Debts & having prayed to be indulged with the Power of issuing such Emissions of a Paper Currency as may be adequate to their Wants, and secured by proper Funds so as to guard against its Depreciation; I have His Majesty's Commands to refer the said Petitions for your Lordships Consideration

I am

My Lords

Your Lordships

Most Obedient

humble Servant

Shelburne

(Enclosure)

Lords of Trade.

Recd Feby 16 }
Read — 17 } 1767.

(Enclosure.)

To the King's most Excellent Majesty

The most Humble Petition of the Commons
& House of Assembly of South Carolina.

May it please Your Majesty,

We your Majesty's Dutifull and Loyal Subjects the Representatives of the Inhabitants of your Province of South Carolina, convinced by un-interrupted Experience, of your Majesty's Paternal care and tender Regard for the Welfare and Prosperity of all your faithfull Subjects, how remote soever from your sacred Person, and that, to procure Redress of Grievances, it is only requisite to make them known to our Most Gracious Sovereign, beg Leave, with all Humility and Veneration, to lay before Your Majesty our Distresses occasioned by a late Act of Parliament (passed without Notice to your Petitioners) which prohibits the issuing Paper Currency in the Colonies as Legal Tender.

These will evidently appear from the following facts and Observations, which we, therefore, most Humbly submit to your Majesty's Consideration. That this Province is not furnished with a sufficient Quantity of Gold and Silver to answer its Demand
for

for Money, the most part of what we get, which is foreign coin and not lawfull Money, being annually exported to Great Britain to pay the British Merchants. This would be the case if the Quantity Imported was much greater than it is, and will be so, whilst the Balance of our Trade is in favour of the Mother Country, which must not only continue but increase with our Demand for her Manufactures and Exports.

That it being absolutely necessary to establish a Currency as a Medium of Trade, an Act of the General Assembly of this Province was passed 20th August 1731, for stamping and issuing Bills to the Amount of one Hundred and Six thousand and Five hundred Pounds, Equal to Fifteen thousand Two Hundred and Fourteen Pounds five shillings and Eight pence Halfpenny Sterling, and Declaring the same to be a Tender in Law in all Payments. The said Bills were accordingly issued, and afterwards reprinted under an Act passed in the Year of our Lord 1748, and are the only lawfull Paper Currency that this Province hath had since that Period.

That although no Fund was by that Act established

established for sinking it, yet the Faith and Honour of the Province being considered as pledged for security to the Possessors of it, the same hath obtained great Credit, inasmuch that it passes readily in the Neighbouring Provinces of Georgia and North Carolina, who prefer it to their own and give large Premium to obtain it, from which no Inconveniences have ever arisen, as it hath never depreciated, wherein it materially differs from the Paper Bills of Credit issued in many of the Northern Colonies, and had its value been doubted the Legislature would certainly have established a Permanent Fund for its security; But the Credit of our Currency hath increased with the flourishing Condition of the Province which the better enables us to support it.

That many of our Bills being worn out and destroyed and a number of them circulating in the Provinces abovementioned it is computed that there is not with us above Seventy Thousand Pounds, Equal to Ten thousand Pounds Sterling.

That our demand for Specie or a Currency as a Medium of Trade having increased in proportion to our Trade with the Mother Country, Fifty Thousand Pounds Sterling in Paper Currency is not

so much, comparing the Trade, Number of Inhabitants and Circumstances of the Province at present with those of the year 1731 as Fifteen thousand Pounds Sterling was then, and would scarcely be adequate to our want of Money, Our Exports upon a moderate computation amounting at prime cost here to at least Three hundred and Fifty thousand Pounds Sterling \pounds Annum, and our annual Taxes for the support of your Majesty's Government here having in several years been more than double the value of our Legal Currency.

That in the late War between the years 1755 and 1760, this Province granted Aids to the Crown besides Defraying the Annual Expences of our Government to the Amount of Seven Hundred and Four Thousand five hundred and Ninety Three Pounds two shillings and five Pence equal to One Hundred Thousand six hundred and Fifty six Pounds three shillings and Two pence Half penny Sterling. For this Purpose Public Orders were issued and tho' there was in actual Circulation to the Amount of Eighty Thousand Pounds Sterling of those Orders and Tax Certificates at a time no Injury happened therefrom to any Individual nor was our Exchange

Exchange is the least affected thereby and the greatest Quantity of Goods was imported from Great Britain when the greatest Number of those Orders and Certificates was circulating. Tho' not legal Tender they had as much Credit and passed as freely because this Province has always observed the utmost Punctuality in calling in and sinking its Orders & Certificates agreeable to the Tenor of the Laws by which they were issued and they might readily be exchanged for it. But since the Sinking those Orders the want of Money hath been and is most sensibly felt throughout the Province.

That from the small amount of Paper Currency any One considerable Merchant or Money Lender may get all in the Province into his Possession, so that the Person of every Man here would then be subject to Imprisonment and his Estate however valuable to seizure at the Mercy of a single Creditor and sale at his price for the most inconsiderable Debt. This dismal Scene must increase as the Quantity of our legal Tender decreases by time which alone would in a few years put an End to all now existing. That the consequences of
this

this Act of Parliament will not only be fatal to the Province but materially affect the commercial Interest of Great Britain. The Importation of whose Manufactures must necessarily decrease with a Decrease of our Ability to purchase them. And the limiting our Paper currency within its present very narrow Bounds will prevent not by Law but from General Convenience and Consent our Exporting Specie to the Mother Country for a Medium of Trade. Whilst Trade is carried on there must be, and if we have not a Paper currency or a sufficient Quantity of it We must have Specie, and if our Exports exclusive of Specie will not pay for our Imports from Great Britain and we keep our Specie, so much the less of British Manufactures must we import because the less able to pay for them. This Retention of Specie may also delay Payment of Debts already due to the British Merchants till they can be discharged with our Commodities and our Inability to purchase all the British Manufactures We have Occasion for may oblige Us to Manufacture partly for ourselves, an Event to which Nothing but Necessity could compel Us as it is not our Inclination nor

nor for the Interest of our Mother Country that we should interfere with her in that respect.

That when it is found Practicable for this Province to procure and keep here without prejudice to Great Britain Gold and Silver sufficient to satisfy our Occasions for Money, the Necessity of a Paper Currency will of course cease. But of this there is not at present the most distant Prospect, and if it ever should happen it must be from some other cause than the Restrictions of the late Act. And as our Currency would then become unnecessary and useless it could not prejudice the British Merchants:

Whilst our Specie is chiefly exported to Great Britain we only can possibly suffer from a large Emission of Paper Currency. But this we do not fear Having felt no ill Effects from what has issued without the actual Establishment of a Fund for Sinking it or any Limitation of its continuance. We are assured that many great Advantages would arise both to us & Great Britain from the Emission of the Quantity wanted upon a proper Fund for its support and that we would readily establish as well as a Fund for Support of our present Currency

currency if we might be so happy as to regain the Liberty which we til lately enjoyed and never abused.

Your Petitioners therefore confiding in your Majesty for Protection and Support against the Dangers to which they are exposed as above manifested, most Humbly pray that your Majesty will be graciously pleased to Recommend to your Parliament a Repeal of that part of the late Act which prohibits the issuing in the colonies any Paper Currency as legal Tender in so far as it restrains this Province from so doing, And that your Majesty will be also graciously Pleased to instruct your Governor to Assent to an Act of Assembly for Emitting Paper Currency as legal Tender to the Amount of Fifty Thousand Pounds Sterling in Value upon the Credit of proper Funds for supporting it and our present Currency or pursue such other salutary Measures for securing the Liberties and Properties of your People in this Province and the Advancement of Our Trade with Great Britain, as to your Majesty in your Royal Wisdom and Justice shall seem meet.

And your Petitioners as in Duty Bound will

will ever Pray.

In the Commons House of Assembly
the 28th Day of November 1766.

By Order of the House
signed P. Manigault Speaker

Also enclosed. —

Address to His Majesty from the Council
& House of Assembly of Nova Scotia

Petition of the General Assembly of New
York.

Opinion of the Merchants of London trad-
ing to the Continent of America, relative to the
most effectual relief to the Colonies in respect to
the present distressed state of their Commerce
for want of a Medium of Trade.

B. P. R. O. A. + N. J. Vol. 223.

Whitehall Feb. 19th 1767.

Lord Charles Montagu

(No 6.)

My Lord,

I have had the Honour to lay before the King your letters of 12th August and 8th Dec^r and His Majesty is pleased to see, from the List of Exports inclosed in the last, that the Province of South Carolina increases so considerably in its Cultivation and Commerce. There is no doubt from the Excellence of its Soil and Situation, and from the great value of its different staples, but with proper Industry it must become one of the most flourishing of all His Majesty's American Colonies.

As nothing can tend so much to retard the Population, & of consequence the Cultivation of the Southern Colonies, as Disturbances or Incursions of the numerous Indian Nations which surround them, His Majesty could not avoid being highly displeased with the Gov^r of West Florida for venturing to commence Hostilities against the Greeks without any authority so to do, His Majesty has on this account thought proper to recall him from

from the Government, and Lt Govr Browne on whom the charge of Government in that Province devolves has recd positive Instructions to put an immediate stop to all Hostile Proceedings against these Indians and to change the Policy respecting them as quickly as a proper Regard and appearance of consistency will allow.

The Accounts received of the steps taken on this occasion, are so imperfect, that [it] is impossible to give precise and definitive orders respecting them, wherefore it has been thought advisable to give only general Instructions, that the most effectual steps may be taken in concert by the Governors of the Southern Provinces & the Superintend^t of Indian Affairs to conciliate the affections of the Indians and to restore Peace and Concord.

The Superintendant has received Orders to bring the Indians to a Congress, if that Measure should be found absolutely necessary and to represent to them how little it is their Interest to be at variance with the only Nation in whose power it now is to supply and protect them.

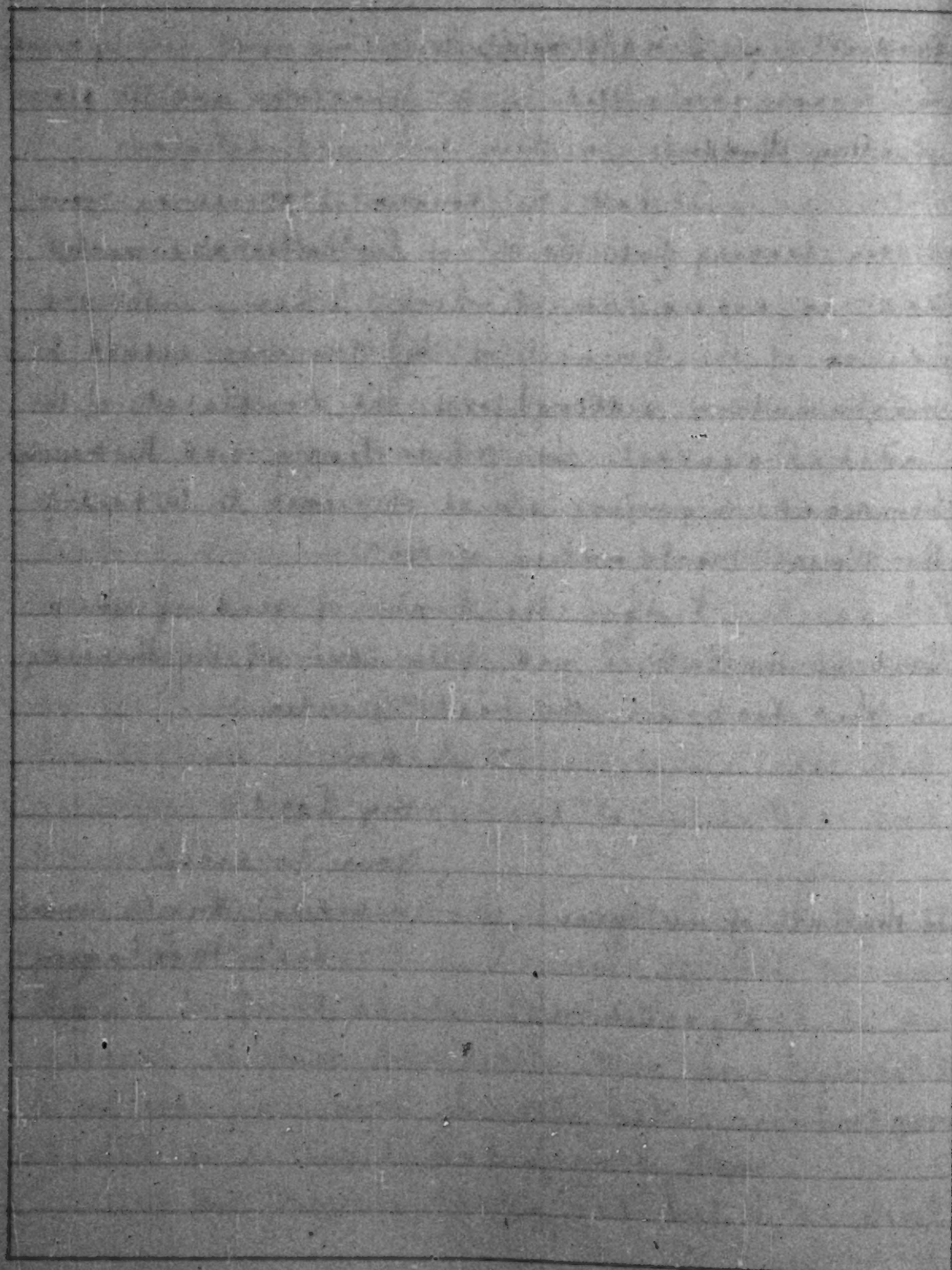
His Majesty doubts not but a prudent
Conduct

conduct in the different Governors will easily remedy
the Error committed by Mr Johnstone and He places
great confidence in their care and diligence. —

I am &c.

Shelburne.

S



B. P. R. O. A. & N. J. Vol. 223.

(No Date.)

My Lord

I had the honour of receiving your Letter bearing date the 13th of September and marked No 1: in consequence of which, I have, with the advice of the Council of this Province, issued a Proclamation, setting forth the Complaints of the Indians against the White People, and His Majesty's Commands requiring strict obedience to be paid to the Royal Proclamation of 1763. —

I have the honor of sending you a List of the Entries and Clearances of the Shipping in this Port, for the last Quarter.

I am

My Lord

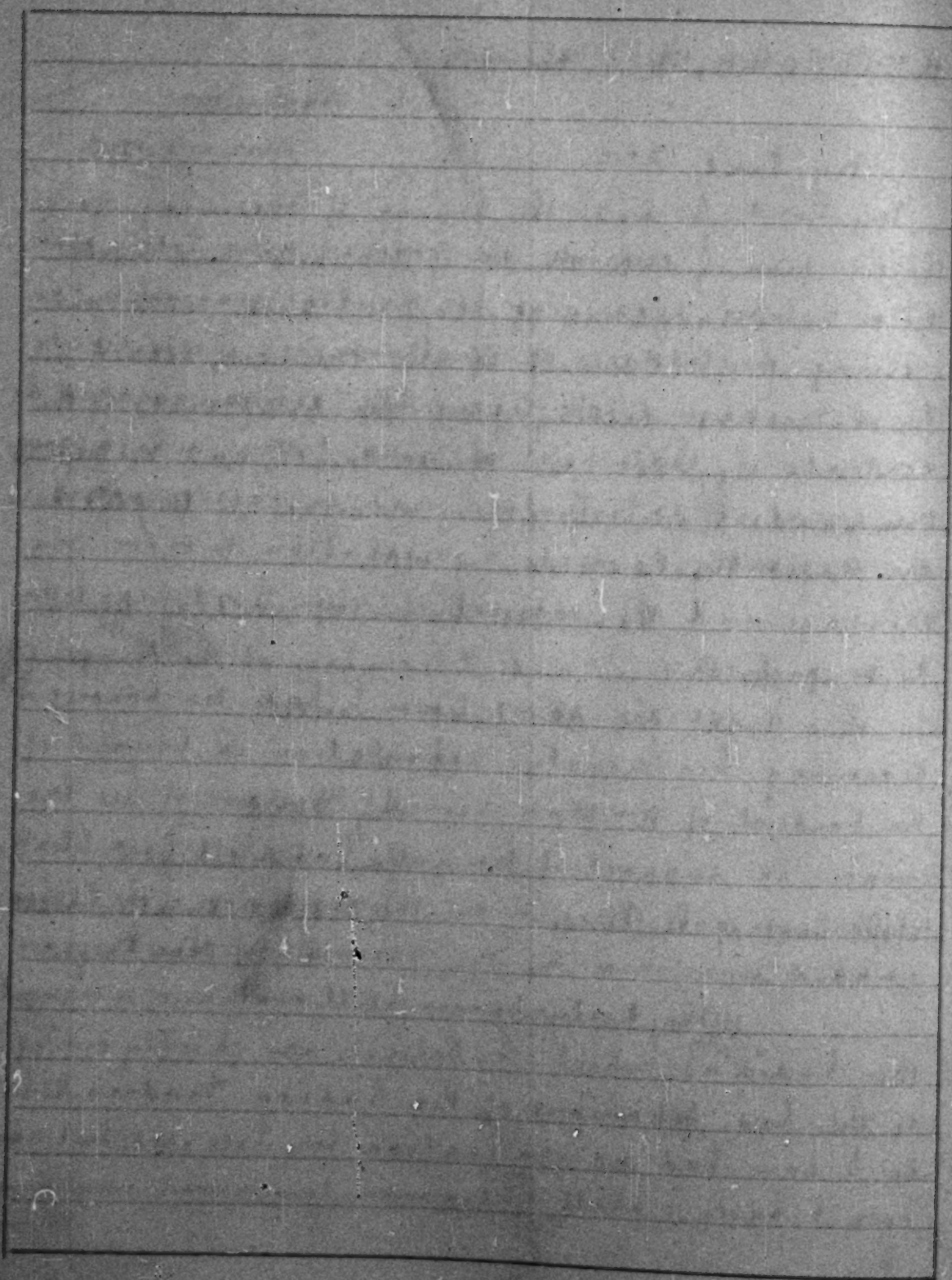
Your Lordships

Obedient Humble Servant

C. G. Montagu

To the Earl of Shelburne.

R. 27 Feb. 1767.



B. P. R. O. A. & H. J. Vol. 223.

S. C. Charles Town

No 2.

March 5: 1767.

My Lord.

I received the honor of your Letter of the 5th of October, signifying his Majesty's graciously receiving the Address of this Province. I immediately, by a Message to the Assembly, communicated the contents of that part of your letter; which gave the greatest satisfaction, and in consequence of it, the Assembly came to a resolution to order my Message and the extract of Your Lordships Letter to be printed.

At the same time I had the honour of receiving his Majesty's approbation in Council of the Conduct of W^m Bull Esq^r Lt Governor of this Province, in support of Dougall Campbell Esq^r Clerk of the common Pleas, with the remission of the Fine imposed upon him by the Assembly of this Province.

The Disturbances still continue amongst the Indians, which I believe are chiefly owing to the bad behaviour of the Indian Traders. Hitherto I have had no application for Licenses, but whenever I have, I shall endeavour to prevent any having them

them, but those whose good conduct and Prudence
may be depended upon.

I am

My Lord

Your Lordship's

Obedient Humble Servant

C. G. Montagu.

To Lt. Shelburne.

B. P. R. O. S. Carolina B. J. Vol. 21. N. 55.

(10 Mar. 1767.)

To the Right Honorable the Lords Commissioners
for Trade and Plantations.

My Lords,

In pursuance of your Lordships Commands signified to me by Mr Pownalls Letter wherein you are Pleased to desire my Opinion in Point of Law upon the following Acts passed in South Carolina in March and July 1766, I have perused and considered the same (vizt.)

1. An Act for Restraining the Exportation of Indian Corn and Pease for the time therein mentioned.
2. An Act for Granting and allowing to the several Inhabitants of this Province and others Interested therein a further time for the Payment of the Taxes Imposed in and by An Act of the General Assembly of this Province commonly called the Tax Act passed the Sixth day of April 1765.
3. An Act for Erecting a Bridge over Salt Latcher River and for Establishing a Ferry over Tombchu River and vesting the said Ferry in Stephen Bull of Sheldon, Esq. for the Term of Fourteen years.
4. An Act for Establishing a Publick Road to Lead from

from the Ferry commonly called John McBords Ferry on the Congaree River to Fishing Creek on the Catawba River and likewise for Establishing or making Publick a Road commonly called Lees Road which leads from the Extream part of this Province to Howell's Ferry on the Congaree Road. And also for making Publick and Vesting in John McBord the Proprietor of the Land on the opposite Side of the said John McBord, Nehulon Gaunt, Samuel Hayley, and Grace Russel respectively the several Ferries therein mentioned.

5. An Act for Raising and Granting to His Majesty the sum of £35,529. 17. 1 and applying the sum of £35,676. 8. 7½ being the Ballance of several Funds in the Publick Treasury making together the sum of £71,205. 5. 8½ to Defray the Charges of this Government from the First day of January to the Thirty first day of December 1765 both days inclusive and for other Services therein mentioned

Upon Perusal and Consideration of the before mentioned Acts I have no Objections thereto in Point of Law, and am
My Lords,

Your Lordships

Most Obedient Humble Servant

Mat Lamb.

Lincoln's Inn

10 March 1767.

Read March 26. 1767.

B. P. R. O. A. & N. S. Vol. 223.

Charles Town Apl. 14.

My Lord,

I received the honour of your Letter of December the 11th Mark'd No 3. by the Grantham Packett which arrived here the last Week, and the contents of it I will send an answer to, by the first opportunity.

In consequence of a Letter, I received some time ago, relative to the Indian Traders, I have in Council agreed to a set of Regulations, which, I hope, will in some Measure, prevent the illicit Proceedings of those Traders; and which, if they do not conform to, their Bonds and Licences will be forfeited. -

I have the honour of transmitting to you the following Papers.

Regulations for the better carrying on the Trade with the Indian Tribes. -

The Entries and Clearances of Vessels at this Port during the last Quarter.

I am, My Lord
To the Earl of Shelburne. your Lordship's Obedient Servant

C. S. Montagu.

Enclosure.

(Enclosure.)

Regulations for the better carrying on the Trade with the Indian Tribes in the Southern District.

1.

No Trader shall employ any Person as Clerk, Pack-Horseman or Factor, in his Service, before an Agreement be first entered into between them, specifying the Time and Conditions of Service, and his or their Names inserted or indorsed on the back of the License, so that the principal Trader shall be rendered responsible for, and subjected to, the Penalties which may be incurred by his or their bad conduct.

2.

No Trader while in any Indian Nation, shall employ in his service any Clerk, Pack-Horseman or Factor, who may have formerly been engaged with any other Trader, until the Time of Service stipulated by his said Agreement be expired, or a regular discharge from such former Master shall first have been had & produced to the person hiring such Servant, shewing that the former contract had been dissolved by Mutual Consent, or till said

said Servant shall have produced a Certificate from the Commissary shewing that the former Contract had been dissolved for good and sufficient Reasons, shewn before him the said Commissary.

3.

No Trader shall employ any Negro, Indian, or Half-breed, professing himself as Indian, or under Indian Government, as a Factor or Deputy, to Trade in any Town or Village, on account of the said Trade.

4.

No Indian Trader shall harbour or conceal any White Person, in the Indian Nation, for a time exceeding fourteen Days, on any Account whatsoever.

5.

All Factors, Clerks, Pack-horsemen and Traders, shall, when regularly and Legally called upon, be aiding and assisting to the Commissary in apprehending any offender.

6.

No Trader shall by himself, Servant or Substitutes, sell to the Indians, Swan Shot, or Rifle Barrelled Guns.

7.

All Goods shall be sold to the Indians, according to

a

a certain Tariff, as is settled, and any Trader by himself, Servants, or Substitutes selling Goods to Indians at any other Prices or Rates than what are contained in said Tariff, shall forfeit his Bond and Licence, unless in consequence of an alteration hereafter made and agreed to at a General Meeting.

8.

No Trader shall credit any Indian for more than Thirty pounds Weight of Indian dressed deer Skin, and all Debts due by Indians above that sum, shall be considered as not recoverable, neither shall any Trader credit an Indian for more than five pounds of Gun Powder, and Twelve pounds of Bullets, in One hunting Season.

9.

The Weights and Measures of every Trader in the Indian Nation shall conform exactly to the Standard Weight and Measure Lodged with the Commissarys residing in the respective Nations whose Weights and Measures shall conform to the Statute Weights and Measures of Great Britain and the like Standard Weights and Measures shall be given to the Indians, when the Tariff is settled, and if any
Weight

Height or Measure shall be found upon Comparison to differ therefrom one Half ounce in Height or one half inch in Length, then such difference shall Subject said Trader to the forfeiture of his Bond and Licence.

10.

No Trader shall by himself Servants or Substitutes, except by Order of the Governor or with the concurrence and Consent of the Commissary first obtained in writing convene any Meeting of the Indians or deliver any Message or Talk to them or propagate any false Report or Reports amongst them

11.

All Traders, their Pack-horsemen, clerks, Deputies and Servants shall communicate all Intelligence, any way relating to Peace or War, or by which his Majesty's Service can be in any degree affected to the Commissaries in the respective Nations, where such Traders shall reside.

12.

Any Trader refusing or neglecting to appear at any Congress, or general Meeting of the Indians with the Commissary, when duly summoned by the
Commissary

commissary, except in case of Sickness or other lawful, unforeseen, or unavoidable cause, shall forfeit his Bond and Licence.

13.

No Trader shall by himself, or Permit any of his Servants to hunt Deer or Bear or set Traps for Beavers in any of the Indians Hunting Grounds, or shall by himself, Servants, Substitutes, Purchase Deer skins, Fur or Peltry of any sort from any White Person hunting or laying Traps as aforesaid, or in any way deal for such goods, by Barter with, or receive the same from, or dispose of, or carry the same to Market for such Hunters.

14.

Any Trader who shall by himself Servants, Deputies, or Substitutes be convicted of Selling to, or Barter Rum or other Spirituous Liquors, with any Indian or Indians, for half Dressed or Raw Deer skins, Bear skins, Fur or Peltry of any sort, shall forfeit his Bond and Licence.

15.

No Trader by himself, Substitute or Servant, shall carry more than Fifteen Gallons of Rum, at any one
Time

Time, into any Nation of Indians, or shall have any more than Fifteen Gallons of Rum, in his or their Possession, at any time, such Importation of Fifteen Gallons of Rum as aforesaid, shall not be repeated till after an Interval of Three Months.

16.

No Trader, by himself, Servants or Substitutes, or any of them, shall Trade with any of the Indians, in the Woods, before their Return to their respective Towns from Hunting, under any pretence whatever.

17.

No Trader shall Buy or take in Barter for their Goods, any Hides or Deer skins in the Hair, or before they are dressed by the Indians, except in the proportion of four undressed Skins in the Hair to One hundred and Fifty Pounds weight of Indian Dressed Deer Skins.

18.

All Traders immediately upon their Arrival in the Nations, Towns or Tribes, for which Licences have been granted them, before any Goods are sold or Bartered with the Indians, shall produce such Licences to the Commissioners appointed for Direction or Inspection of the Trade at such Posts or Truck Houses
or

or in such Tribes, Towns or Nations, to whom they shall give an Exact List of their Servants, blacks and Pack-horsemen.

B. P. N. O. South Carolina B. J. Vol 21.

(N. 58.)

South Carolina

May 12th 1767.

My Lords,

On the twentieth Day of April last, the Assembly of this Province presented an Address to me, desiring I would immediately suspend the Hon^{ble} Char^s Skinner Esq^r from acting in the Office of Chief Justice, for particular reasons set forth in a Report which was deliver'd to me at the same time. Two days after receiving this Address, I acquainted Mr^r Skinner of it, gave him the Report, and desir'd, as soon as he could conveniently, to send me a Defence of his conduct in writing.

On Sunday May the third, I receiv'd a Message from him, with a Memorial, by way of Answer to what was alleg'd against him in the Report. In a matter that concern'd the removal of one of His Majesty's Officers, I did not think it would be advisable to rely entirely on my own opinion, without consulting

consulting his Majesty's Council of this Province,
 I therefore stated the case to them, and desired
 their opinions concerning it: they requir'd
 a time, to consider of it; and yesterday morn-
 ing acquainted me, that it was unanimously
 their opinion that, the Honble Charles Skinner
 Esq^r was unacquainted with Law and en-
 tirely unfit for the Office of Chief Justice,
 and that they therefore advis'd me to suspend
 him. I have accordingly by a letter dated May
 the 11th acquainted him that he is suspended
 untill his Majesty's Pleasure be farther known.

I have the honor of sending you a copy
 of the Report and of the Memorial that I
 receiv'd from M^r Skinner.

I have the honor to be

My Lords

Your Lordships

Obedient humble servant
 C. Montagu.

B. P. R. C. South Carolina. B. V. Vol 21.

Report of a Committee of the House of Assembly
of South Carolina appointed to enquire into
the State of the Courts of Justice.

In the Governor's letter of 12th May 1767.

That, having in Obedience, to the order of this
House, made such enquiry, The principal
matter necessary to be at present represented
to the House on that subject, is, what follows
relative to the Hon^{ble} Charles Skinner Esq^r as
Chief Justice of this Province.

It is evident from the Testimony of very
competent Witnesses, common observation, and
the notoriety of the Fact, obvious indeed to
everyone who goes into Court, that the said
Chief Justice is a person wholly unacquaint-
ed with, and ignorant of the Common Law,
such Acts of Parliament as are of force here,
and the Acts of Assembly of this Province, and
that the general tenor of his conduct in that
station manifests such ignorance, and shows
him to be entirely unfit for a place of so
much

much consequence. Nevertheless your Committee recommend to the House, if they have any doubt on so clear a point, to interrogate such of its Members as are of the long robe, to it. That altho' the Committee apprehend want of knowledge of the Law must be deemed a cause sufficient of itself to have the said Chief Justice removed from his Office, and think it unnecessary to set forth here any particular instances of his ignorance, as they are very numerous, and that notorious. Yet as in the course of their examination sundry matters were produced concerning him which do not properly fall under that head alone, they thought themselves bound by duty to the House, and in justice to the Public, to select some of the most material of them, which with their Resolutions they submit to the consideration of the House.

And first, It appeared to your Committee, that the Chief Justice sent to heal, without any Mittimus or written Commitment, the servant of one Richard Brandon who was owner of a waggon loaded and ready to go
into

into the Country, which servant was taking care of the Waggon in the street during Brandon's absence, that while the man was thus confin'd, goods to the amount of £50 or £60 were lost or stolen out of the Waggon, for which Brandon never receiv'd any satisfaction, and that the only charge against his servant, was alleg'd to be the smacking his whip, as the Chief Justice was passing along in his chair, which frightened his horse and made him start.

It also appear'd that the constant method of juries giving their verdicts in this Province, has always been, and still is, by their Foreman's indorsing and subscribing the substance of such verdicts on the Back of the Record. That in May Term 1765 an Action of Covenant in the Court of Common Pleas by William Harrey against William Elliott for Breach of certain Covenants contained in a Release of Conveyance, of a Tract of Land, was tried and a Breach of the Covenants being prov'd, the jury found a verdict in these words "We find for the Plaintiff £388.4.7.11. with Costs of Suite thereupon the Defendant being dissatisfied with the Quantum of Damages,

a Motion was made for a new Trial on a suggestion that they were excessive, but reject'd by the Chief Justice, notwithstanding which a Motion being directly afterwards made in arrest of Judgement, for the following very extraordinary reasons, because the Issue was to try whether the Defendant did, or did not, break his Covenants, the Jury did not answer the Issue and say whether he did or did not, and for that they found for the Plaintiff a particular sum in Damages, but did not say for what, and did not assess any sum for the costs (which is contrary to the usual Practice of the Court) The Chief Justice order'd the Judgement to be arrest'd, and grant'd a new Trial.

It likewise appear'd, that the Chief Justice with a Pistol in his hand brought one William Smith to Prison, and there delivered him to the Goaler, where he remain'd a day without any Mittimus or written Commitment or Detainer, and then the Chief Justice sent one, in which he was charg'd with threatening the life of Elizabeth Brown, a woman who then liv'd with the Chief Justice, He sometime afterwards

afterwards wrote a letter to the Keeper of the
Prison of which the following is a true copy.

M^r Donnan,

I wish the unfortunate wretch
Smith, in your custody committed by me, was
out of the Province, because if I fall upon him
it may be much worse than he apprehends,
suffer him therefore as thro' favour to M^r O'Brien
and as without my knowledge to let him go off
in the packet for England, But it must be so
done as that I am suppos'd to know nothing of
it, bring this up to me after he is gone, and I
will give you a proper discharge for him, &
the Key, I am

Your Friend

Charles Shinner. 17 May 1766.

To

M^r James Donnan

Coaler

But Donnan deliver'd the letter to M^r Pinckney
the Provost Marshall, who would not discharge
Smith upon that, whereupon M^r O'Brien an
Attorney at Law, who lived with the Chief Jus-
tice came to Donnan for the Letter, and being
told that M^r Pinckney had it, express'd great
surprize

surprize at Donovans parting with it, declaring that the Chief Justice relied on him as a Country man and did not think he would have done so, that he would not for 100 Guineas have it get into any other hands, and therefore press'd him to fetch it back for him, which he did.

It also appear'd that one Andrew Reid, alias Johnson, a free Negro, being indebted to the Chief Justice, he brought him to prison, and there deliver'd him into custody without either Writ or Warrant, where he remain'd for sometime till the Chief Justice went to an Attorney and had a Writ issu'd against him, by virtue of which he was detain'd.

It likewise appear'd that M^r George Smith of this Town being Attorney to one Jennings of Bermuda, and having apprehended a run away Slave named Clarinda his property, sent her to the Work House to be confin'd, till he could get an opportunity of shipping her to the Owner the Wench having found means of applying to the Chief Justice, pretended to be free, and he having several times sent for, and had the said Wench to, and at his House,
wrote

wrote a letter to the Warden of the Work House
of which the following is an exact copy.

S^c. Carolina 26 June 1765.

Sir,

A Negro Wench named Clarinda (heretofore the property of Stephen Miller) now in your custody and keeping hath presented her Petition to me setting forth that she had been sold by or at the Instance of the said Stephen Miller to a Spaniard at the Havanna from whence she since made her escape and return'd into this Province and therefore claims her Freedom or a Trial for the same. This is therefore to charge and command you the Keeper or Warden of the Work House that you do not deliver the said Wench to any Person or Persons whomsoever without my order until the said Trial so pray'd for by her Petition is finally heard, as you shall answer the same at your Peril.

To

Charles Shinner

M^r. Holson.

M^r. Smith apply'd several times to Holson for the Slave but he would not deliver her being forbid by the Chief Justice, after she had been
a

a considerable while in Hobson's Custody he went to the Chief Justice to know how he was to be paid his Fees for keeping her, who advis'd him to sell her in order to defray the Charges, but he did not and has never receiv'd any Compensation for his Expence in supporting her by the Chief Justice's Directions 480 days, Mr Smith understanding the Wench was detain'd by the Chief Justice's means spoke to him about her and he order'd Mr Smith to bail her, which he refus'd, there upon the Chief Justice declar'd that if he was not then going upon a particular occasion he would commit him for his refusal. He afterwards sent for him to know by what Authority he put the Wench into the Work House, order'd him to enter into Recognizance for her which he would not, and again threaten'd to commit him for refusing. Mr Smith not being able to recover possession of the slave brought an Action of Trover in behalf of Jennings against Hobson who when the Writ was serv'd on him went to the Chief Justice to know how he should act, he told him to go to one Mr Oldham an Attorney that he would enter an appearance for him, that

that it should not cost him a farthing and that the Chief Justice would indemnify Holborn for detaining the Bench, he accordingly went to Oldham who entered an appearance and put in a Plea for him in that Action, But when the Trial was about to be brought on, the Chief Justice was very anxious to have it put off, That Mr. O'Brien the Attorney came to Holborn in presence of Oldham, and by desire of the Chief Justice press'd him very much to sign an Affidavit which they had ready drawn up, the purport whereof was that there were two Witnesses necessary for Holborn's defence whom he could not have present at that Court. But this he would not do as he did not know or believe that to be the case, The Cause coming to Trial before the Assistant Judges who were appointed in February 1766 there having been but one Assistant Judge appointed before that time, since the Chief Justice came into the Province, who therefore if there had not been such an appointment as one Assistant Judge, has no right, by Law, to try a Cause, must have sat as Judge in a Cause wherein he was a Party, a Verdict was given for the Plaintiff for

for £200 damages with costs of suits and upon
Hobson acquainting the Chief Justice therewith,
he answered it was all Hobson's fault, for if he had
made the affidavit which O'Brien brought to him
it would not have happen'd, and the Chief Jus-
tice thereupon took the Wench as his property &
paid the Amount of the Verdict and Costs.

It likewise appear'd that one Elizabeth Dart
an indent'd Servant was committ'd to the
Work House by Mr Pennington a Justice of the Peace,
pursuant to the power of Magistrates under
an Act of Assembly for eloping from her Master,
by that the next day the Chief Justice sent an
Order for her discharge in the words following

April 8.th 1766.

Sir,

Whereas Elizabeth Dart hath petition-
ed me and thereby set forth that having an im-
clination to come into this Province where
many of her Friends and Neighbours as she
heard were happily settl'd, and being unable
to pay the expence of her Passage, had enter'd
into some agreement in Ireland to serve one
William Beatty or his Assigns for the term of
years

years therein mention'd, which she saith she is ready to perform Nevertheless that the said William Beatty for his own private advantage and lucre hath taken upon him to sell her term and time of service to a gentleman who intends carrying her to Pensacola in Florida against her will and contrary to her agreement and alledges that it is a manifest breach thereof on the part of him the said Beatty and therefore pray'd the protection of Law and that Justice may be done to her, and that she be enlarg'd from Imprisonment, I do therefore desire you forthwith to discharge her out of your custody, for which this shall be your Warrant.

Given under my Hand &c^a

Charles Shimmer

upon which she was set at liberty and went to the Chief Justice's House

It further appear'd that a Negro distrain'd by the Attorney of John Meeks for rent due to him by one Nathaniel Raymer was deliver'd to the Warden of the Work House by Meeks's Attorney to be kept till such steps should be taken as are required by Law previous to the Sale of anything distrain'd

distrain'd. But that the Chief Justice came to the Work House with Rayner, and endeavour'd to persuade Holson to discharge the Negro alledging he was not Rayner's property but his Child's and therefore tho' found on the demur'd premises not liable to be seiz'd for Rent, Holson refus'd to deliver the slave unless the Chief Justice would indemnify him, and he accordingly join'd with Rayner in an Instrument of Writing to indemnify Holson for returning the Negro. He thereupon delivered him, Meeks brought an Action against Holson for damages sustain'd by this Measure, and he was refer'd by the Chief Justice in this case also to Oldham to enter an appearance and Plea for him, who said it should not cost him anything.

It also appear'd that one Edward Dempsey brought into this Province from the Havanna, two Negro men which formerly belong'd to Messrs Russell and Kirkpatrick of that place, he purchas'd them of those persons, and paid a part of the purchase money, the Remainder was to be remitt'd after he had dispos'd of the Negroes here, which he intended to have done.

But

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But they having secretly apply'd to the Chief
justice alledging that they were free, he sent
for Dempsey and threaten'd to handcuff him
and send him to goal for stealing the Negroes
that he brought them out of his room separ-
ately to accuse Dempsey, but they differ'd in
their stories, one averring that he stole them
the other that he came by them falsely, where
upon Dempsey desir'd the Chief justice to send
for the Master, Mate and People of the Vessel
in which he brought over the Negroes, but this
he declin'd and would not hear Dempsey, abus-
ing him very much and declaring that Demp-
sey was the rogue, and he would keep the Negroes
Dempsey was therefore oblig'd to go away leaving
them there, sometime after he sent for him to
Court who going thither the Chief justice on
the Bench call'd him a damn'd rascal and
threaten'd to send him to goal but at last
order'd him to come again to give security.
That the Chief justice desir'd the then Provost
Marshall to take charge of one of the Negroes
and be his Guardian But afterwards sent Mr.
Hutchings a Country Waiter to seize him for
the

the Duty which is payable upon importing Negro Slaves, and had not been paid, he did so, but sometime after the Chief Justice sent for Hutchings and told him he thought the Negro free, and would therefore protect him, Hutchings accordingly gave up the Negro who now lives in Town as a free man, Dempsey not daring to take him up for fear of the Chief Justice, that one Mr Berwick an Ensign in the army came to the Chief Justice, that he might hear what he could relate of the matter having known the Negroes when they belong'd to Russell and Starkpatrick but all to no purpose, he never would restore the Negro.

It further appear'd that one Scott being kill'd at the Waters, the Coroners Inquest found the fact to have been committ'd by Mark Nettles a man of bad character against whom for the murder of said Scott an Indictment was found at the last Session, Mr Curry a Magistrate having issued a Warrant for apprehending Nettles and also a Hue and Cry against him, he apply'd to the Chief Justice who happen'd to be then at Pine Tree and he neither committ'd him

him nor took Bail for his appearance at Court, but suffer'd him to go at liberty, and gave orders to Mr Ogletorp a Magistrate for protecting him.

In January last some Persons who liv'd near Mr Curry, going to the Chief Justice's House, he told him that the man whom they saw sitting with him was Nettles that kill'd Scott, that he understood Col^l Curry with his jury (meaning the Coroners Inquest) had found it wilful Murder, But he the Chief Justice order'd these Persons as soon as they return'd home to wait on Curry and tell him that he need not trouble himself about the man any further for he would stand his Trial and likewise to tell Curry they had seen Nettles in his the Chief Justice's House and that Curry must not let any of the Constables molest him, which he repeat'd several times with great earnestness, that in discourse with these men he told them a long story about one George Black and eleven men having laid in wait for him as he heard on a journey which he took some time ago into the back parts of this Province and conclud'd with saying he hop'd to have the

the honor of passing sentence upon Black, as he had done on his two brothers Thomas Moon and George Black, persons who had been condemn'd and execut'd for felony.

The Chief Justice's orders were accordingly deliver'd to Curry and one Mr Bond a Magistrate having also issu'd a Warrant against Nettles for this crime, he was brought before him, but the Constables were much intimidat'd by the Chief Justice's declaration, and two men offer'd to be Bail for Nettles, one declaring he would rather loose his life than he should be committ'd, and the other that the Chief Justice had order'd that he should not be meddled with which was a reason why he should not, but that Mr Bond thinking that he had no power to take Bail in such case and being about to commit Nettles a Riot ensu'd and the Magistrate and persons who attempted to assist him in the execution of his Duty were abus'd and very ill treat'd, Mr Bond having a tooth knocked out, another man part of his ear bit off and a third being dangerously wounded, and Nettles was rescued carried off and set at liberty by

by several people, assisted even by two Constables
call'd M^r Ogletthorpes in consequence of the direc-
tions which the Chief Justice had given.

And Lastly it appear'd that the Chief
Justice behaves commonly in Court with the
utmost levity, folly, ludicrousness and Subcency
and that the chief duty of a Judge on Trials
by jury which is that summing up the Evi-
dence, and giving the jury a charge upon Point
of Law, is either wholly omit't'd or when at-
tempt'd by him done in such a confus'd im-
methodical and injudicious a manner as serves
to puzzle and perplex not to direct and illustrate;
That he seldom fails to attend the Execution
of his Sentences for inflicting Corporal punish-
ment on Criminals, there strolling about the
Streets with a Mob and acting a part on such
Occasions beneath the character even of the
Executioner.

Having stated the foregoing Facts
thus particularly for the satisfaction of the
House, the Committee thought it needless to offer
any Reflections or Animadversions on them, but
upon the whole came unanimously to the
following

following Resolutions

Resolved That it is the opinion of this Committee that an adequate knowledge of the Laws of the Land is essentially and absolutely necessary in a Chief Justice of this Province, that the Honorable Charles Shinner Esq. is wholly ignorant of those Laws and therefore unfit for and incapable of executing the said Office and that our most gracious Sovereign was deceiv'd in his grant of the said Office to him.

Resolved That it is the opinion of the Committee that the said Chief Justice in many of the Instances above enumerated hath acted illegally, arbitrarily, partially & oppressively.

Resolved That it is the opinion of this Committee that the said Chief Justice by a long and continual series of misdemeanours & notoriously public indecent behaviour hath brought in contempt, ridicule and disgrace, an Office of great Trust and Dignity and of the highest Importance to the rights of the Crown and the lives and liberties and properties of the good People of this Province.

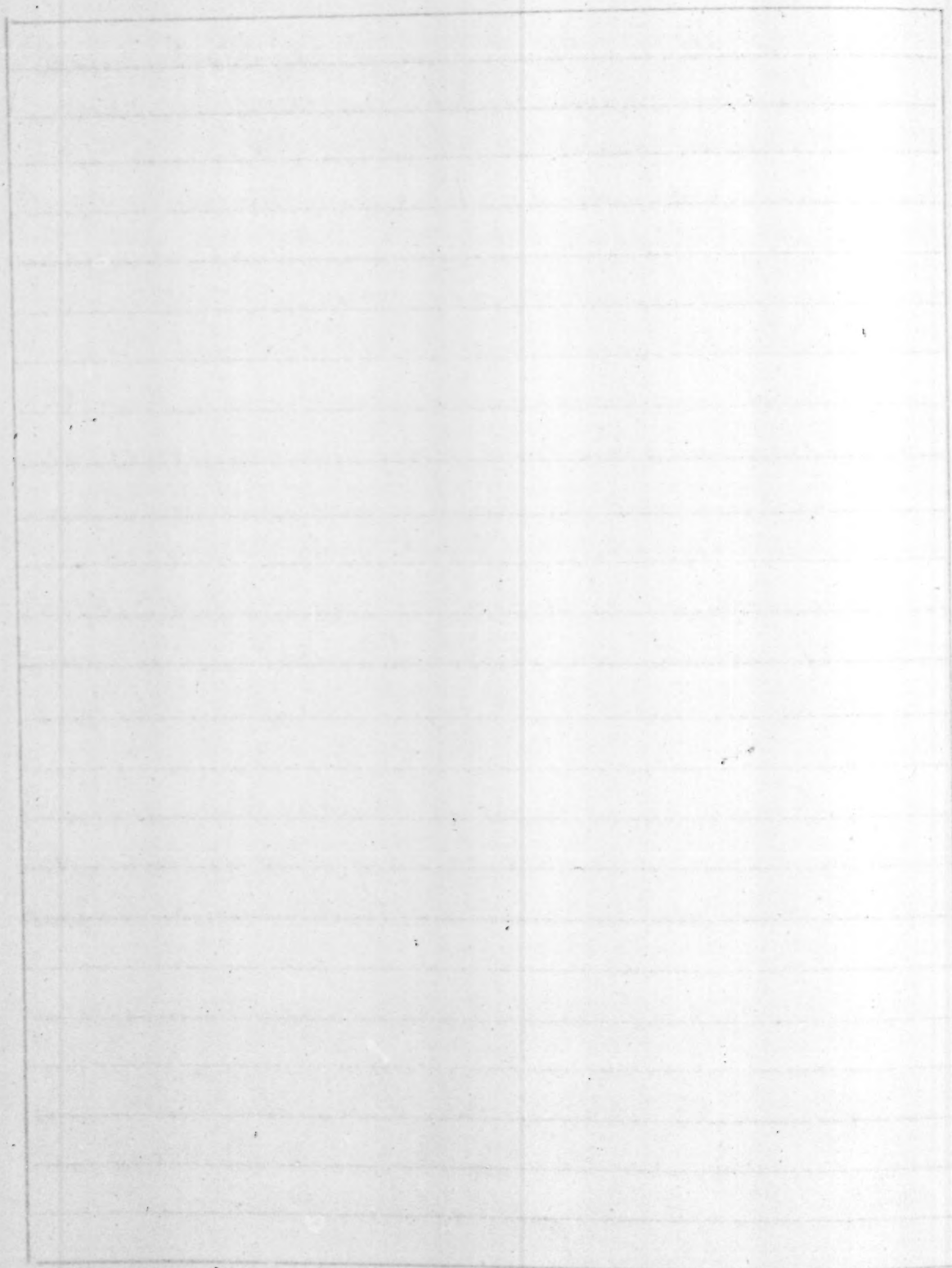
Resolved That it is the indispensable

indispensable Duty of this Committee to recom-
 mend to the House which they therefore do in
 the strongest manner, That an Address be im-
 mediately presented to his Excellency the Gov^t
 to suspend the said Chief Justice from his
 Office until his Majesty's Royal Will and
 Pleasure upon our complaint against the said
 Chief Justice shall be known, and all constitu-
 tional Methods used to obtain his Removal or
 Dismission from his said Office, and the ap-
 pointment of some fit and proper person in
 his stead by whom Justice may be faithfully
 and judiciously administered according to Law.

**RECORDS IN THE
BRITISH PUBLIC RECORDS OFFICE
RELATING TO SOUTH CAROLINA**

**VOL. 31
1766-1767**

CONTINUED



To His Excellency the Right Honourable Lord Charles
Greville Montagu Capt Gen: & Commander in
Chief in and over his Majesty's Province of
South Carolina.

The humble Memorial of Charles Shinner
Chief Justice of the same Province.

Your Memorialist has diligently perused and
attentively considered the report of the Committee
lately appointed to enquire into the Courts of
Justice in this Province, and as that Report con-
tains no other matter than what relates to
himself, which is an accusation of, and complaint
against him, as Chief Justice, your Memorialist
thinks it incumbent on him in justice to him-
self and for the honor of the Sovereign his
Master, who is indirectly reflected on, to make
the best defence he can to what is alledged against
him.

The Report first charges your Memorialist
in general Terms, with being a person wholly
unacquainted with, and ignorant of the Common
Law, such Acts of Parliament as are of force here,
and the Acts of Assembly of this Province.

Your

Your Memorialist apprehends, that the Committee
 would have gone a little far, had they charg-
 ed almost any British Subject, within this Pro-
 vince, with being wholly ignorant of these matters,
 and that the expression is less applicable to him-
 self than it would have been to many others.
 For your Memorialist begs leave to represent,
 that he has been many years conversant in
 the Business of the Law, at home, and employed
 in the Management of many Causes both in
 Courts of Law and Equity; that he has also been
 a Student of Grey's Inn in London, that he has
 had the honor to have sat for upwards of five
 years Chief Justice of this Province, without As-
 sistants, till very lately, and that whilst he has
 so sat, many matters of very great consequence
 depending upon some knowledge of the Common
 Law, some Acts of Parliament which are of force
 here, and some of the Acts of Assembly of this
 Province have been solemnly argued and debated
 by eminent men of the Long Robe before your
 Memorialist, and therefore he apprehends that it
 is not undarrantable to conclude that it is
 absolutely impossible he should be wholly
 ignorant

ignorant as the Report asserts. And for a proof that he is not so he cannot help observing, that out of the many determinations which he has made on solemn arguments, the Committee, some of whom were of the long Robe, and have constantly attended the Courts, have not been able to select more than one, which they had the least pretence to find fault with.

As to the Common Law your Memorialist must take notice, that it has been very frequently and truly termed the *Lex non scripta*, that it is not, nor ever was regularly digested into *Codes*, like the Roman Imperial or Civil Law, and that the knowledge of it even but in part depends upon an acquaintance with a very great variety of Reports & adjudged Cases, many of which contradict other and therefore it is submitted, that tho' no man can well be said to be wholly ignorant of it yet he must be something more than Man, who is perfectly and absolutely acquainted with it so as judicially to determine what the Common Law is in every case.

As to Acts of Parliament your
Memorialist

Memorialist cannot help contending, that he is tolerably well acquainted with so many of them and the Readings and Cases adjudged upon them, as are necessary for one of his profession to have knowledge of: and therefore and for that, some of them have often been debated upon before him he cannot be wholly ignorant of such of them as are of force here ~~this~~ but if the Committee means that he is ignorant that some of them are of force here, this he readily grants may possibly be the case. For, besides the general Law to enforce in this Place some Acts of Parliament, your Memorialist knows that a few of them are made of force by subsequent Acts of Assembly; and he does not know but many more of them may be because most of the Acts of Assembly of this Province are not to be got at. And this naturally brings your Memorialist to animadvert upon the charge, that he is wholly ignorant of the Acts of Assembly of this Province. Your Memorialist confesses that he is in a great measure ignorant of them: but this ignorance is invincible; because few of these Acts have

ever

ever been printed, so that anyone who can read may recur to them.

It has been long a Complaint that the Acts of Assembly want both printing and digesting, every time your Memorialist has given charge to Grand Jurors in this Province, he has recommended in strong terms this want to be presented as a grievance. The Grand Jurors have as constantly order'd those presentments to be laid before the Legislature. Yet this Evil still subsists, and your Memorialist apprehends it ever will subsist, at least that it will subsist for a very long time, because many Gentlemen of the Law, are constantly elected in to the lower House of Assembly, whose Interest it is to keep others in ignorance of those Acts, and your Memorialist knows that some of the Lawyers, Members of the House, have frequently declar'd in open Court, that the moment the Acts of Assembly of this Province come to be publish'd, they will quit the Bar, and betake themselves entirely to planting.

Your Memorialist cannot but insist upon it, as an indisputable Truth, that should
his

his Majesty appoint the most eminent Man of the Long Robe in England to be Chief Justice here, he must at first be wholly ignorant of those Acts of Assembly; and his Ignorance must afterwards remain in a great measure and that inevitably, for the very reason that your Memorialist now remains as he has confess'd in so much Ignorance of them. And your Memorialist thinks it clear that this is the principal reason why the Assistant Judges have been always composed of old Inhabitants of this Province and Members of the Assembly, which Assistants he was till very lately in absolute want of, as he has before observed.

I descend now to the particular charges against your Memorialist. The first thing alledged against him is, that he sent to Goal without any Mittimus or written Commitment the Servant of Mr. Richard Brandon who was owner of a Waggon loaded and ready to go into the Country, which Servant was taking care of the Waggon in the street during Brandon's absence, that while the man was confined, Goods to the amount of £50 or £60 were lost
or

or stolen out of the Wagon, for which Brandon never received any satisfaction, and that the only charge against his Servant was alledged to be the smacking his Whip as your Memorialist was passing along in his chair, which frightened his horse and made him start.

Your Memorialist hopes he shall as readily be believed on his word as Brandon and his servant on their words, and that he does not contend, but that the fact as the sending to jail without a Mittimus was true, not but, so far as respects the want of a Mittimus your Memorialist was not strictly right, yet he must insist that the man deserved commitment for what he did, an exact Relation of which follows.

The fact happened during October Session 1765 at a time when the Good People of this Province were in a very turbulent disposition on account of the Stamp Act and well known to bear no great good will to your Memorialist who, as a King's Officer, had declared he thought it his duty to be aiding in carrying the Act into execution, and who had but a little before, done as much as he dared with

with prudent regard to his own life and the Interest of his Family, to suppress the burning other Kings Officers in Effigy, which however he could not effect.

It was late in a very dark Evening, that your Memorialist was returning from the Court homewards, and in a narrow lane he observ'd 5 or 6 Waggoners cracking their long whips at one another and making a deal of noise with those Instruments. Your Memorialist called out to them and desired them to be quiet for that he had a horse very apt to start, but they paid no attention to this, continued their outrage, and just near the turning from the Lane into Kings Street jointly gave a very loud Crack with their whips, (and one of the whips actually touch'd your Memorialist) which made the horse run away, overturn the chair and throw your Memorialist into the street, tho' without much damage, and he being greatly irritat'd did, on foot, pursue those who had assault'd him, and having got hold of one, did, in the heat of his passion send him to prison, without a written Commitment, where

where he remained a very short time.

Your Memorialist did and still does suppose that the man intended to do him some injury, as they knew his voice, his carriage and person, and knew him not to be a party with them who affected to be called Liberty Boys.

It was near a week after this that Complaint was made that some Goods had been stolen out of Brandon's waggon. No pretence of the kind in the mean time: and it is imagined to have been a mere pretence, because Brandon after refusal of satisfaction, never did seek to be relieved at Law as he might, even at the time of the complaint which was before the Stamp Act took place.

And was your Memorialist to be punished for what he did in this case he thinks that the proper mode would have been for Brandon and his servant to have commenced Actions against him, the one for false Imprisonment, the other for his special Damages, and that it was rather preposterous to seek relief or revenge either by means of a Committee of the House, the House itself, or your
 Excellency

Excellency in or out of Council.

To come now to the second allegation against your Memorialist -

The Committee say that he order'd the judgment in a civil Cause to be arrested, because the Issue was to try whether the Defendant did or did not break his Covenants, the Jury did not answer the Issue and say whether he did or did not? and for that they found for the plaintiff a particular Sum in Damages but did not say for what and did not assess any Sum for Costs; tho' your Memorialist had just before refused a new Trial of the same Case, on a suggestion that the Damages were excessive.

Your Memorialist apprehends that there is a wide difference between a Motion for a new Trial on account of excessive Damages and a Motion in arrest of a Judgment, because the Verdict did not answer the Issue: he might, as he did, reject the one and grant the other, and yet be perfectly consistent: and that he was not wrong in rejecting the first Motion must appear to your Excellency from the following consideration, that when the cause

came

came to be tried again after the judgment had been arrested, a second jury varied a little in the Quantum of Damages from the former, that it appeared a Posteriori, that the Defendant had better have avoided the Expense of a new Trial, as your Memorialist a priori imagined it must appear.

Now that your Memorialist was right in granting the other motion is what he must insist on, if the verdict did not answer the Issue, surely it was a good reason for arresting the judgment, and not a very extraordinary one, as the Committee are pleased to term it. The same thing has been done many times at Home, and your Memorialist could much enlarge on this Head and refer your Excellency to a multiplicity of Authorities in support of this last assertion, if he could suppose your Excellency could have any doubt upon so clear a point.

The matter was solemnly argued by 4 very eminent Gentlemen ere your Memorialist determined upon it. The Hon^{ble} Mr Leigh and Mr Parsons were for arresting the judgment, Mr Pickney

Mr Pinckney and Mr Rutledge (which last was of the Committee) were against it, and Mr Parsons & as your Memorialist has been very credibly informed, when the Report was under consideration of the House, argue very strongly in the House, that the judgment ought to have been arrested, and your Memorialist is morally certain that both he and Mr Leigh are still of the same opinion, which they declared in Court upon the Motion.

But suppose your Memorialist has been ever so wrong in granting the Motion, it was at worst but Error in Judio, to which all men are liable. No man is infallible; and had Judges not been often guilty of mistakes, a writ of Error, an Appeal, or anything congenial to these had never been heard of, at least the Term had not been in so frequent use, and the things themselves so often brought as they have been and still are. How common has it been at Home for a Writ of Error or Appeal from 4 Judges unanimous, to be brought into the Exchequer Chamber before all the 12 Judges of England, the judgment affirmed, and

and yet afterwards received for Error in Parlia-
ment, a Writ of Error &c. is a Writ of Right,
founded on the Fallibility of Mankind and tis
almost every days practise to make use of such
Writs. Why did not the Gentlemen pursue this
method or appeal to the then Governor and
Council to undo that which your Memorialist
had done? no they did not chuse to serve their
clients this way, but reserved it as cause of com-
plaint against the Judge near two years after
the Affair happened, and your Memorialist must
observe, that amongst all the Judicial Decisions
which have been made by him during a space
of time more than 5 years this Error in Judg-
ment (if it is one which your Memorialist by
no means admits) is the only one which a
Committee of very able, & strongly prepossessed and
incensed against him, and by consequence very
willing to have found fault with every one
of his Decisions, if they could have done it
with any tolerable pretence, has been able to
point out.

The next charge is, that your
Memorialist with a pistol in his hand, bro't
one

one William Smith to prison, and there delivered him to the Gaoler, where he remained a day without any Mithimus. Your Memorialist does absolutely deny his having a pistol or any offensive weapon, in his hand, or about him at the time, except that he had in his hand a common walking cane.

Your Excellency will please to attend to the fact as it really happened.

This William Smith had many times most cruelly beat and wounded one Elisabeth Browne who did live with him as his wife, in such a manner that her life had been, very often despaired of, in consequence of his ill treatment she had several times fled from him and sheltered herself in the Houses of different Gentlemen who afforded her protection, untill Smith became troublesome unto them and riotous about their Houses, all of those who entertain'd her as in the capacity of a House-keeper and entrusted her with the Keys, particularly M^r Fenwick and Doctor Chalmers both of Charles Town will give the woman a very good character. She had been terribly cut
and

and beat by Smith when she flew to your Memorialist as a Magistrate for the preservation of her life and person from danger, by such means as the Law has entrusted in the hands of every common Magistrate for the purpose. Your Memorialist hearing a good character of the woman, and being at that time in want of a Nurse for his wife who was far advanced in pregnancy, entertained her in that capacity and Smith, being before him, upon his solemn and reiterated promise never more to be troublesome to her, and also at the Woman's request was for that time discharged. Notwithstanding which, Smith would frequently come about the House of your Memorialist with fire arms and other dangerous weapons, and would sometimes come into the House and terribly beat and abuse the Woman and make a great noise and disturbance, even during the lying in of Mrs Shimmer, and after her death when your Memorialist entertained Broome as his House-keeper he having at that time two very young children to be taken care of, the man still continued the same kind of behaviour, but took
care

care not to let your Memorialist see him, At
 last a Warrant was issued by a Magistrate for
 his apprehension, upon which he was taken and
 committed till he should find sureties for his
 good behaviour. He lay in goal sometime but
 being absolutely unable to find any sureties, he
 was discharged at the Instance of Broome who
 pitied his confinement, upon his recognizance
 to be of good behaviour, still his behaviour con-
 tinued unaltered, and one Sunday in the after-
 noon, your Memorialist being at church Smith
 came into his House and knocked the woman
 down and terribly beat and bruised her, till at
 last he was secured by one who happened to
 be in the House and by a Constable a next neigh-
 bour who hearing a noise came in and who
 seeing an actual breach of the Peace had un-
 doubtedly a right to secure him without
 Warrant as he did, these two conducted Smith
 out of the House, but had not gone with him
 above five yards before they met your Me-
 morialist in his return home from church.
 Your Memorialist having heard the adventure
 and knowing Smith to be a very strong and
 dangerous

dangerous man, and probably too many for those who had him in custody, but not tied, did immediately turn back and for better security walked with them and did lodge him in goal for that night without a Mittimus but the next morning very early sent one Smith having lain a great while in goal, and having there contracted some disorder, Bretonne again moved with pity, wanted to have him released if any probable means could have been hit on, to prevent his ever resorting to her again: and this together with Smith's offering by letter now to be produced to go off in the Packet for England, occasioned the letter to the Goaler which the Committee have copied in their Report. Afterwards in last October Session, it being thought proper to deliver the Goaler, Smith was brought before the Assistant Judges in open Court (your Memorialist having quitted the Bench upon the occasion) and they after fully hearing your Memorialist and Smith, declared they thought him a very dangerous man, not to be suffered at large, and remanded him for want of Sureties, tho' the very men tho't proper afterwards to discharge him without

without. And so lately as last March Session the Grand Jury without hesitation found a Bill against Smith for beating and wounding Brune, and process thereupon issued for his apprehension. Your Excellency it is hoped now clearly sees how very trivial a cause of complaint this matter of Smith is which the Committee has painted in the blackest colours, a matter which your Memorialist apprehends to be totally improper for a Complaint at all to your Excellency. Smith might have taken his remedy at Law, by Actions against your Memorialist, against the Provost Marshall and against the Gaoler, which two latter were equally culpable, as to this matter with your Memorialist and might for detaining without a Writimus be complained of in the same way with as much propriety as he now is. Of a similar kind, but less in degree than even what relates to Smith is the complaint about imprisoning the free Negro without Writ or Warrant. Sir, the free Negro was indebted to your Memorialist in so considerable a sum as £255. had absconded for a long time and was thought to have been gone, but was actually

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actually going off the Province at the time your Memorialist saw him in the street very near the Goal, and he did put him into Goal, and instantly went to an Attorney and issued a Writ, and the free negro was not half an hour in custody without Writ or Warrant. Since that the Negro broke out of Goal together with some Thelons, and is in reality gone of the Province as your Memorialist verily believes whereby he has irrecoverably lost the Debt.

With respect to the matter relative to the slave Clarinda, the present Lieutenant Governor Hall sent her to your Memorialist, that she might recover her freedom by Law, he apprehending as he declared that she was intitled to her freedom, because she had been sold from this Province to an Enemy a Spaniard at the Havana and had flagrant Bello between Great Britain and Spain, escaped from the Enemy, & return'd to His Majesty's Colony. She was in consequence of his Honour's recommendation detained by order of your Memorialist in the Workhouse till a Guardian could be appointed her, to prosecute the recovery of her freedom according.

according to the mode prescribed by the Negro
 Act, her Master or his Attorney having threaten-
 ed and attempted to carry her off and sell her
 again. She not being able to procure a Guardian,
 an Action of Trover was commenced against Holson
 then Warden of the Workhouse, in the name of
 one Jennings who called himself her Master, &
 when the Trial was coming on your Memorialist
 knowing that her, and these the only Witnesses
 who could have proved her having been sold to
 any Enemy at the Savannah & escaping in War
 were absent, did cause Holson the Defendant in
 the action to be advised to make such Affidavit
 as is mentioned in the Report and your Memo-
 rialist did apprehend such witnesses to be mater-
 ial, because if as he imagined she was, under
 the circumstances of her case, intitled to her
 Freedom, then it would have followed, that she
 could not be the property of anybody, and conse-
 quently Jennings could not have maintained
 Trover, but Holson must have had a Terrib
 with loss to. Holson however refused to make
 the affidavit because as he said he wanted to
 see an end of the matter, and, as he knew your
 Memorialist

Memorialist must indemnify him, he did not care which way the cause went. A Verdict was given for £200 Damages with costs, which your Memorialist soon after did pay out of his Pocket. 'Tis very true that the Nench was not entitled to her freedom, but your Memorialist to know certainly whether she was or was not must have had a perfect knowledge of a certain Act of Assembly of this Province, which he could not then nor till since the report has been received, obtain a sight of, that Act was made to enfranchise a Negro man named Arrose who had been taken by and escaped from the Enemy and all others in the same circumstances. Your Memorialist till he saw the Act, did apprehend, that Negroes sold to, out of and escaping from the Enemy into this Province were intitled to their freedom. So was the general Nation, and your Memorialist for want of means of informing himself, could not easily divine the manumitting Act made the nice distinction between taken and sold.

That your Memorialist did afterwards take the Nench as his property is not true, for
Hobson

Johnson having the property vested in him by the Verdict, did in consideration of your Memorialist having paid the damages and costs which Damages were above twice the value of the Negro fairly assign her to your Memorialist by Deed now in his custody and long ago recorded in the Secretary's Office.

Your Memorialist cannot quit this Head without observing that the Committee have very artfully omitted to insert the Quantum of Damages given in the Case of Clarinda which they might very easily have informed and in all probability did inform themselves of, but this, as it would have tended to shew that your Memorialist for interfering in this Case, has already suffered in more than double the Sum the Wench is worth, as everyone who sees her, if candid must acknowledge, the Gentlemen chuse to pass over in sub silentio.

The next particular alledged against your Memorialist is, that he by note in Writing (which in the report is called an order) desired the Warden of the Workhouse to discharge one Elizabeth Dart an Indented servant who
had

had been committed to the Workhouse by a Justice for eloping. The Gentlemen are pleased to say that this Commitment was pursuant to the power of Magistrates under an Act of Assembly your Memorialist knows of no such Act of Assembly, but he has seen in Mr Simpson's book concerning Justices in this Province, a copy of a pretty late Act of Assembly relating to white servants, but in that Act as far as appears by Simpson there is no such power given to add two or more Justices much less unto one.

But if the Justice had been right in his commitment your Memorialist thinks he had a right to desire, and as every one of the circumstances mentioned in the Note was fully proved, was right in desiring her Discharge, what a right, Holborn might have to discharge her in consequence of such desire.

Your Memorialist now applies himself to say something relative to the affair of the Negro distrained at Nathaniel Maymors for Kent - The Case happened thus. The Negro who was about 8 years old was the property of an Infant about the same age, Upon the Application of Mr O'Brien

Obrian the Attorney setting forth the fact and representing that the Stamp Act was then (as it was then) in force, and no stamped paper to be had and that therefore he could not obtain a Replein for delay, but that the Negro must be sold at Vendue for much less in all probability than he was worth and the Infant of him thereby absolutely deprived of his property and growing Interest, and upon Obrian's protestation, that the Rent and charges of Distress should be soon raised and paid, and the Landlord thereby satisfied, your Memorialist in compassion did (not as a Chief Justice but as a private man) take the thorn out of the Infants foot and put it in his own, by indemnifying Holson for parting with the Negro, which tho' he may be blamed, he apprehends he ought not to be accused for doing. Notwithstanding Obrian's protestation no part of the Rent or charges was ever raised & the Action having been brought against Holson your Memorialist sensible it could not be defended did, without going to trial pay the Rent, the charges of Distress and the costs of Suit to the Attorney at Law for the Plaintiff all which amounted

amounted to a considerable sum, but your Memorialist must insist, that he was not so ignorant as not to know that the Negro having been Servant and Couchant upon the premises, tho' not Rayner's property was distrainable for his Rent: tho' he had not been so Servant and Couchant upon the Premises, but only found upon the premises, as the Committee word it, your Memorialist is clearly of opinion that he would not have been distrainable for that Rent and therefore a Replevin would have lain and might have been well supported, and if the Bar finding a Negro upon premises will subject him to distress for the Rent, then it will follow, that a slave rent of an Erand, may be so distrained even before he can deliver his Message, a Position which it is apprehended the Committee will be unwilling to advance, in direct Terms and unable to maintain.

As to the two Negroes, who were brought into this Province from the Garamah by Mr. Edward Dempsey, your Memorialist has all the reason in the world to believe they never did belong to Messrs Russell and Kirkpatrick, or

or either of them. These Fellows were recom-
 mended to the protection of your Memorialist by
 your Excellency's predecessor the late Governor
 Boone, who being as he believes a native of this
 Province had long known Dempsey, and as he de-
 clared to your Memorialist and others of his Maje-
 sty's Council knew him to have been many years
 a Crimp, which he explained to be a Deceiver of
 Negroes, white servants and sailors in order to
 make advantage of them in a manner which
 his Excellency said Dempsey knew very well.
 The story which these two Negroes told the
 Governor and your Memorialist was this. That
 they had whilst the English were employed
 in the reduction of the Savannah, found means
 of escaping from their then masters in Cuba,
 to the English Army in consequence of a de-
 claration of the General Officer, that all Negroes
 so escaping, should be free to go to England or
 elsewhere, as they should see fit. That they
 did voluntarily render some service to Messrs
 Russel and Kirkpatrick then Subaltern and
 now Commissioned Officers in the Army, that
 Dempsey one of them who had formerly been
 the

the property of Dempsey in this Province and
 was a native of it, but had been sold when very
 young to a Spaniard at St Augustine, seeing
 Dempsey then a Barber to the Army, made him-
 self known to him and after he had inquired
 after his mother and kindred Dempsey told him,
 if he would return to Carolina, he would carry
 him, and that here he might see his relations
 and would be free. That the Negro very readily
 agreed to Dempsey's proposal, and then Dempsey
 desired of him to prevail on some other Negroes
 to come also to Carolina. That he did prevail on
 one named Amsterdam, also a native of this
 Province, and that Dempsey after the reduction
 of the Savannah, in a secret and clandestine
 manner carried them off and brought them hi-
 ther, where he claimed property in them tho' they
 worked their passage. The late Governor Boone
 and your Memorialist imagined from this
 story, and from the character of Dempsey and
 from their incompetent knowledge of the strict
 Terms of the Act for enfranchising Slaves es-
 caping from the Enemy, that the Negroes were
 well intitled to their freedom, and therefore
 your

your Memorialist did take some steps to recover it for them; But Dempsey afterwards got Stepin into his possession and sold him to one Lazarus Brerone at Indian Land in whose possession your Memorialist believes he now is. The other it is true is now in Charles Town as free and is not now claimed by Dempsey; who, tho' often asked by your Memorialist, never did produce any Title to the Negroes, or either of them, except that he once came to him with one Mr Berwick then an Ensign, but now a Taylor in Charles Town who produced a kind of order on Dempsey said to be drawn by Russel and Kirkpatrick for Money on account of the Negroes or one of them, but this order appeared from the quantity of sand sticking on the writing to have been wrote just before, and therefore after so glaring an Imposition your Memorialist does acknowledge that he would not hear the relation of Berwick.

The Committee was pleased to say that the Negroes differed in their Storys; one asserting that Dempsey stole them, the other that he came by them fairly. There is a most subtle distinction

distinction indeed with scarce any difference, and it might be absolutely without any, even the most minute, for it's clear that if Dempsey did steal them he must have come by them falsely tho' the reverse of this position would not be exactly consistent in terms.

That Dempsey does not dare to take up Amsterdam for fear of the Chief Justice cannot be true, because Dempsey has very commonly declared he is not afraid of the Chief Justice and has frequently abused him in very gross and indecent terms, as your Memorialist can prove, but Dempsey may be afraid that if he should take the Negro up he may insist that he is not the property of anyone in this Province & so be sold according to the terms of the Negro Act, which will deprive him of claiming property in the Negro, unless he first pays a good and valuable consideration for him.

Your Memorialist must take notice how artfully this charge concludes, as it is reported He (your Memorialist) never would restore the Negroes? which seems to insinuate that he has been ever since and still is in possession of them,

or one of them, whereas it is notoriously known, that he never was in possession of either of them for a day together, and that one of them was sold soon after his arrival by Dempsey to Braine in the County, and the Reporters have themselves acknowledged, that one of them (who is the other of them) now lives in Doron as free.

With Relation to what concerns your Memorialist respecting Mark Nettles, he must observe that Sest who was killed by him was a Notorious Horse Thief and Out Law, and, at the time of killing, in the actual Commission of a Felony, that of Horse Stealing which was but a few years ago thought to be so growing an evil, and one of so mischievous and dangerous consequence, that an Act of Assembly, still in force, was expressly made to exclude Horse Stealers from the Benefit of the Clergy; that it appeared to your Memorialist from all the evidence of the Fact which could then, or, as he believes, can yet, be collected, that the killing was such a killing as the Law Terms Homicide justifiable; which is not Felony, nor occasions any forfeiture, that it farther appeared that
 Nettles

Nettles was a courageous Man, and had been and
 was very likely to continue, very usefull in
 ferreting out those Gangs of Vilelons, which
 are well known terribly to infect the back Parts
 of this Province, and also, that he was an honest
 Man, whose word might be taken, and from
 all these Considerations upon his word and the
 words of 3 or 4 Gentlemen of good repute for
 his appearance to take his trial, your Memoe-
 rialist did, without taking Bail, which Nettles
 could not procure, and without committing him,
 as that he thought would be too great a pun-
 ishment, for a fact which he still thinks merits
 commendation rather than any punishment,
 suffer him to go at large, and did give some
 such directions as are in the Report. Nettles did
 come to Town, surrendered himself and was
 ready to have taken his Trial, but the Attorney
 General not being prepared to bring it on last
 Session, he was committed by the Court for
 want of Bail, and is now in Custody of the
 Prisoner Marshal. So that if your Memorialists
 conduct in this affair was not precisely right,
 it was, as he hopes, not extraordinarily amiss;
 as

as good might have sprung of it, by the apprehension of other Felons by means of Kettler, as no harm was likely to ensue; as the course of Law with respect to the Trial of Kettler, has not been obstructed, as hardly any mischief actually has ensued; and as in the present circumstance of the affair none can ensue from it. And your Memorialist thinks it hard that he should be charged with what was done in the Country by riotous persons, not in consequence of his directions, but of their having misunderstood or exceeded them. Whether your Memorialist told some persons who lived near Mr Curry a long or a short, he insists on it he told them a true story, about one Goocy Black and eleven Men having lain in wait for him (as he was very credibly informed by many persons of good repute) on a journey which he took sometime agoe into the Backparts of this Province; This Goocy Black and the others are all very notorious Felons and Outlaws, Black in particular stands indicted for several different Felonies, excluded Clergy; tho nobody has yet been able to apprehend him; and your Memorialist concludes this

Heard

Head with saying, that he had rather have the honour of passing sentence upon Black, than at his hands lose his own life.

That the Chief Justice behaves commonly in Court, with the utmost lewdity, Folly, Ludicrousness and Indecency, can be no other ways answered by the Chief Justice than by saying that he thinks he has as good a right to apprehend that not to be the case as the Gentlemen to apprehend it is. And he must be the strangest Man that ever existed, if he had, nay 'tis totally and absolutely impossible, that he should have behaved commonly in Court with the very utmost lewdity, Folly, Ludicrousness and Indecency, What with more than ever Mankind did on any occasion always with the same degree too! not more or less at one time than another, but always when with any with the utmost 'behave with the same degree of Lewdity, Ludicrousness and Indecency, upon serious, as upon jocular subjects! The same degree of Folly upon Subjects which almost the greatest Fool can understand and penetrate into, as upon subjects which men of very good sense may be liable to mistake

mistake about and consequently to incur the
 censure of some degree of folly! most monstrous
 'tis an absurdity and a solecism to assert so much

As to summing up Evidence and charging
 Juries upon points of Law. Your Memorialist
 grants he has sometimes omitted it, but then
 it has been when the Evidence has been so short,
 or plain, or both, and the Law so clear, that it
 became needless, and in such Cases it is well
 known that the Judges in England do almost
 always omit it, but as to its being done by your
 Memorialist in such a confused unmethodical &
 injudicious manner as serves to puzzle & perplex,
 not to direct or illustrate, your Memorialist
 contends it has always been his intention to
 direct and illustrate, and if he has sometimes
 failed in it, it might as well have been owing
 to some defect in the Intellects of the jury, or
 some of them, as in his own.

But have juries been puzzled and perplexed by
 your Memorialist? Where is the Evidence of
 this? if they have not, then the confused,
 unmethodical and injudicious manner which
 the Gentlemen are pleased to ascribe to him, has
 not

not served to puzzle and perplex, however it may have tended that way.

Upon the concluding charge against your Memorialist, he must observe that, that Article appears to him to have been foisted in, on account of what happened the Day or Day but one, before the Report was presented to the House.

Your Memorialist did attend the Execution of a sentence for inflicting corporal punishment, but it was inflicted on an old and very great offender, who would have been convicted of Felony without Clergy instead of petty Larceny, if the Attorney General when he prepared the Indictment, had been informed of the Evidence which afterwards appeared in Court, as your Memorialist is ready to make appear. In such a case as it is well known such sentences are very slightly executed in this Province so as hardly to be feared or felt, your Memorialist is surely excusable for interfering in a manner which would have been improper on a common Occasion. Having dispatched the several particular accusations against your Memorialist in the Report, a few Considerations on the Resolutions of

of the Committee are next to be offered to your Excellency.

The first Resolution is indeed a most extraordinary one. That it is the opinion of the Committee that an adequate knowledge of the Law of the Land is essentially and absolutely necessary in a Chief Justice of this Province. An adequate knowledge of the Law! Would not a competent knowledge satisfy the Gentlemen? Adequate? Sir, it may be with confidence averr'd, that no one Man in the World ever had, or possibly can have such a knowledge of the English Law, the study of which is one of the most arduous, most intricate, perplexed and uncertain Investigation that Man can undertake. There is not a science existing wherein a Man can arrive to absolute certainty, or an adequate knowledge. *Terminus* ^{us} *quod hoc* are exactly synonymous, unless the Mathematicks be excepted, yet even there the squaring the Circle, the perpetual Motion, and some other Matters have puzzled, yet puzzle & perhaps ever will puzzle the Heads of the most Learned. What occasion would there be for

pursue

pensive Judges at Home, if one Man could have or
 was supposed to have an adequate knowledge of
 the English Law? What occasion for Assistant
 Judges here, if the Chief was supposed to have
 an adequate knowledge or even a competent know-
 ledge of so much of the Law of this Land as is
 essentially and absolutely necessary for a Chief
 Justice of this Province? But an adequate know-
 ledge of what Law? The Law of this Land!
 surely a very superficial knowledge of so much
 of the Civil and Canon Law as is in force and use
 here is all that is essentially and absolutely ne-
 cessary for the Chief Justice, he has no occa-
 sion to be very well read in the Justinian code,
 the Pandects, Digests, the Canons & Constitutions
 Ecclesiastical, little, very little has he to do with
 Causes relative to Naval and Maritime Affairs,
 with Causes that belong to the Cognizance of
 the Court Christian, He is neither Ordinary
 nor Judge of the Admiralty, nor as Chief Justice
 need he be extremely well versed in the Rules of
 Equity, the Competent knowledge of which belongs
 to another Department, and if an adequate or
 even a competent knowledge of the Acts of Assembly
 of

of this Province, which surely are part of the Laws of this Land, be essentially and absolutely necessary for the Chief Justice then it may be averred that there never will be a Chief Justice of this Province endowed with such a knowledge for reasons given above.

The Committee further resolves that your Memorialist is ignorant of those Laws which he hopes he has before demonstrated to be impossible, & therefore say they, unfit for and incapable of executing the said Office. Therefore! Wherefore! Because they are pleased to say he is what it is not possible he should be.

The second and third Resolutions of the Committee need not be taken farther notice of than just to observe that the Gentlemen have been pleased unanimously to resolve matters which are by no means deducible as Conclusions from the premises, and that without reflecting or animadverting on them, at least without offering any reflections, or animadversions on them, for that, they declare they thought needless.

The Committee, after their Resolutions, recommend to the House that an Address be
immediately

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immediately presented to your Excellency to suspend
your Memorialist, which he has heard that
Honourable Body has since done. The Address
itself or a copy of it which he requested of your
Excellency, he has not been able to obtain. And
therefore he can say very little to it, Only he
must note that he has heard that he is therein
charged with endeavouring to subvert the con-
stant custom of the Province for a series of years.
But can this simply considered be imputed as
a Crime? 'Tis an established maxim in Law,
that, in consuetudinibus non diuturnitas tem-
poris, sed soliditas rationis, est consideranda,
and therefore as a Custom must be certain & it
must be reasonable. An uncertain or unreason-
able one is *Idolo de se*. Not that your Memori-
alist has any Quarrel with the Custom alluded
to which he is not sensible he has endeavour-
ed to subvert, only he must observe that it
is by no means a certain one: but he acknow-
ledges he thinks it so far reasonable, that it
may possibly do good and cannot do Harm.

Having now gone thro' the Report, your
Memorialist begs leave to offer to your Excellency
a

a few reflections upon the whole.

And first it is evident from common observations and the Notoriety of the fact, that the Committee which sat more than a Month was composed of Men very well known to bear your Memorialist much ill will, because he did what he thinks was his duty to the King his Master endeavouring to aid the carrying the Stamp Act into execution. All of them furious Libertybobs, three of them, the very three who were appointed to meet the famous Congress at New York, the Chairman one of those three.

This Committee have laid many heavy and grievous charges against your Memorialist upon the Testimony of hardly competent and by no means credible Witnesses and those not upon Oath, low persons of very indifferent character, prejudiced against and seeking to be revenged of your Memorialist for protecting the poor from the wrongs of their Oppressions, for doing what Humanity obliged him to.

These Gentlemen have very carefully selected everything which they possibly could inform themselves of, which might look like
even

even a false step in your Memorialist for upwards of five years, Some of the Facts happened so long ago as his first arrival in the Province, Most of them are a considerable while ago. Every little faux pas, almost every unguarded expression in your Memorialist has been carped at. Nothing has been lost for want of gathering, and at last all those Nuga appears together in a Bundle, in order to make those things collectively appear huge and deserving serious regard, which separately taken must have been considered by any candid, ingenious person as mere Bagatelle, almost too minute for his observation, much too trivial for his comment.

What in the course of their Examination turned out to be your Memorialist Honour, the Committee even pleased to bury in oblivion: particularly some matters relative to the Renunciation of Doctors of Common Law &c. And as to those matters particularized in the Report it is certain that no one of the persons who could have been of service to your Memorialist by way of Justification Extenuation or Alleviation were ever called before the Committee.

No.

No, the Facts were taken for true *modo et forma* as they appeared upon the Testimony of Partial Witnesses painted too in the most aggravated Colours, by Men confessedly of Abilities and well skill'd in this kind of Deception; *quorum omnes uno Animo, uno ni exclamant* that your Memorialist ought to be suspended.

If your Memorialist was to be asked what that Man is *solutor qui capitis risus hominum sanamque dicacis*: he would refer to Horace who in the fourth Satire of his first book at the 85th Line in *medio*, gives such an answer to this question as will be far from pleasing any White Man in this Province.

Your Memorialist must farther observe that Brandon and his Servant William Smith, Andrew Reid alias Johnson the Master of Eliza. both Dart and Edward Dempsey as they had so they still have their remedies at Law against your Memorialist. None of them as yet barred by the Statute of Limitations. That Jennings and Meek have already taken their remedies and that there is a very trite but therefore the more firmly established maxim in Law
which

which runs in these words - *neque hoc puniri
debet pro uno et eodem delicto.*

To this purpose your Memorialist thinks it not impertinent to cite so much as is applicable to the matter in hand, of the case of William Bridgeman and another against Rowland Golt and others as it is reported in Shower's Parliament Cases Page m. There a Petition was exhibited in *domo procerum* against Three Judges of the Kings Bench, praying the Lords to order the said Judges or some of them to seal a Bill of Exceptions. The Judges insisted on it that there was another and a proper Remedy, and that there was no precedent to warrant the Petition, and therefore prayed that it might be dismissed.

The Report goes no farther. But it appears from a Collection of Protests in the Council Chamber of this Province that afterwards the Petitioners themselves had leave to withdraw their Petition and that it was withdrawn on Friday the 10th October 1698. Your Memorialist does not recollect the page of the latter Book.

And your Memorialist hopes your Excellency will not think him too ludicrous (at least
that

that you will not go so far as to say that, on this Occasion he behaves with the utmost ludicrousness) if as the Gentlemen have been pleased to single out one particular Instance in which they say he arrested a Judgment for very extraordinary reasons to single out another wherein the Judges of the Court of Kings Bench ordered a Judgment to be arrested for one of the most extraordinary reasons that ever Man could dream of, and yet those Judges never were to your Memorialist's knowledge called to account for it. He mentions (if your Excellency should think him wrong in ordering that Judgment to be arrested) purely to keep himself in Countenance. The Case Sir, is reported in Croke James 184. It was an Action for scandalous and defamatory words. The words were these. "Sir Thomas Holt struck his Cooke on the Head with a cleaver and cleav'd his Head, the one part lay on one shoulder and the other part on the other." Not guilty was pleaded. A Verdict with Damages was found for the Plaintiff and it was afterwards moved in Arrest of Judgment that the words were not actionable, it not being averr'd that the
Cooke

Cooke was killed, and the Judges declared themselves gravely and seriously as well as verbatim that, notwithstanding such wounding the Party might be alive at the time of the Motion and arrested the Judgement accordingly.

Thus Sir afflicted as I am to observe such a Torrent of unprovoked Malice of Unrestrained Hatred, Malice and Revenge, and of the most virulent Rancour setting in upon me, afflicted too with the sudden and very recent Death of my only Child I have, as you desired my defence in Writing, made the best I could in the very few days which your Excellency was pleased to allot me for that purpose, against the accusation of a Body of nine very able Men, who sat longer than a Month purposely to frame it.

I hope your Excellency will not immediately suspend me, I hope you will send the Report and Address together with this Defence home, that I may appeal to a good and a gracious Sovereign to whom and to the King of all Kings I must in dernier resort be accountable. As to my Enemies, Persecutors and Slanderers

Slanderees (more particularly a most remarkable
Boutefeu well known at home) I pray the Lord
that he will deliver them from Pride, vain glory
and Hypocrisy, from Envy, Hatred and Malice
and all Uncharitableness: and that it may please
him to forgive them and to turn their Hearts.

I am

My Lord

Your Excellency

Most Obed.^t hble Servant

Charles Skinner

Saturday Evening
May 2^d 1767.

B. P. R. O. S^c Carolina B. J. Vol 21. N. 60

(26 June 1767)

At the Court at St James's.

the 26th Day of June 1767.

Present

The Kings Most Excellent Majesty
in Council.

Whereas there was this Day read at the Board a Report from the Right Honourable, the Lords of the Committee of Council for Plantation Affairs, upon considering a Representation of the Lords Commissioners for Trade and Plantations, upon sundry Laws passed in His Majesty's colonies in America, and particularly, upon an Act, passed in South Carolina in August 1765, Entituled, "An Act for Establishing a Parish in Berkeley County, by the Name of St Matthew, and for Declaring the Road therein mentioned to be a Publick Road" — and it appearing that the said Act, if suffered to be carried into execution, would tend to increase the Representative Body of the said Province. — His Majesty in Council, was pleased to declare his Disapprobation thereof And is hereby pleased to order, that the said Lords Commissioners for Trade and Plantations do prepare and lay before his Majesty at this Board, a
Draught

Draught of an Additional Instruction for the Governor of the said Province, requiring and commanding, that he do not for the future, upon any pretence whatsoever, give his assent to any Law or Laws, - to be passed in the said Province, by which the Number of the Assembly, shall be enlarged or diminished, the Duration of it ascertained, the Qualifications of the Electors or the Elected fixed or Altered, or by which any Regulations shall be established with respect thereto, inconsistent with His Majesty's Instructions to the said Governor, as prejudicial to that Right or Authority, which he derives from His Majesty, in virtue of His Royal Commission and Instructions - And His Majesty is hereby further pleased to order, that the said Lords Commissioners, do likewise prepare and lay before his Majesty at this Board, a like Draught of Instruction for His Majesty's other Governors in America who have not such an Instruction already.

Robert Walpole

Read July 16 }
Read Dec 22 } 1767

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B. P. R. O. So Carolina B. J. Vol 21. N. 61.

(26 June 1767.)

Present

The Kings most Excellent Majesty
in Council.

Whereas by Commission under the Great Seal of Great Britain, the Governor Council and Assembly of His Majesty's Province of South Carolina, are Authorized and empowered, to make, constitute and Ordain, Laws, Statutes and Ordinances for the Public Peace, Welfare and Good Government of the said Province, which Laws Statutes and Ordinances, are to be as near as conveniently may be, agreeable to the Laws and Statutes of this Kingdom, and are to be transmitted to His Majesty, for his Royal Approbation or Disallowance; and Whereas in pursuance of the said Powers, an Act was passed in the said Province in August 1765, and transmitted, intituled as follows, - vizt.

• An Act for Establishing a Parish in Berkeley
• County, by the name of St Matthew, and for De-
• claring the Road therein mentioned, to be a publick
• Road -

Which Act, together with a Representation
from

from the Lords Commissioners for Trade and Plantations thereupon, having been referred to the consideration of a committee of the Lords of His Majestys most Honourable Privy Council for Plantation Affairs, the said Lords of the Committee did this Day Report, as their Opinion to His Majesty, that the said Act ought to be Repealed. - His Majesty taking the same into Consideration, was pleased with the Advice of His Privy Council to declare his Disallowance of the said Act, and pursuant to His Majestys Royal Pleasure thereupon Expressed, the said Act is hereby Repealed, Declared void and of none Effect. Whereof the Governor or Commander in Chief of His Majestys said Province of South Carolina, for the time being, and all others, whom it may concern, are to take Notice and Govern themselves accordingly.

Recd —
 Read Jan. 22 } 1768

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B. P. R. O. A. & N. S. Vol. 223.

(11 July 1767)

To the Right Honble The Earl of Shelburne, His Majesty's Principal Secretary of State for the Southern Department.

The Memorial of Charles Garth Esq.
Agent to His Majesty's Province of South Carolina

Sheweth,

On behalf of His Majesty's Subjects residing in the said Province of S^c Carolina. That by the System of Government established there in the Infancy of that Colony, a Provost Marshal was appointed, as an Officer to execute by himself or Deputy the ministerial executive Part of the Administration of Justice, which Office continues to subsist to this time with an annual Salary from the Crown. —

That however proper and useful it might be to establish such an Office in the early days of a Colony, when the Inhabitants are few in Number, the Settlements likewise, and these close upon and connected to and with each other, yet as Colonies have improved in Culture & Inhabitation it has been found necessary for the better Government of the same, that a division into Counties sh^d take place

place, an Establishment of County Courts and Courts of Nisi Prius also, with all the necessary Appendages to a due Administration of civil and Criminal Justice therein.

That notwithstanding the Jurisdiction of a Provost Marshal is co-extensive with the Limits of a Colony, and such Provost Marshals have a Power of deputizing, yet that in extended Colonies this Office has been found to be highly inconvenient, being generally farmed out to a Deputy, who is not obliged to subdepute with a view to a more speedy and less expensive Manner of Justice being administered within the Colony to the discouragement of Settlers, to the Prejudice of Creditors and to the Encouragement of Offenders against the Laws.

That the Office and Duty of Sheriffs and of Provost Marshals seem to be in all things similar and the Powers the same except in Extent; in the Province of Connecticut this Officer, as appears in the Connecticut Laws, was indifferently called a Marshall or Sheriff, and it is apprehended upon the best Enquiry had of Provost Marshals, that there is no other difference between the Officers than in Extent of Jurisdiction, and possibly less of Responsibility.

- bility in the Discharge of such a very important Duty. -

That this Idea seems farther confirmed by the Approbation given to such Laws as have at sundry times been passed for regulating as well as for establishing Sheriffs in several of the colonies in lieu of a Provost Marshal: In North Carolina Anno. 1738 an Act of Assembly was passed, confirmed by His late Majesty, for appointing Sheriffs in the Room of a Provost Marshal, the Patentee of that Province having agreed for a compensation to relinquish his Office, by which Law the County Court of each County does every two years return a List of three Persons to the Governor for his Nomination of one therefrom to serve as Sheriff for two years. - In New Jersey Sheriffs were appointed in lieu of Provost Marshals and by an Act 21st Geo. 2. their Term of Continuance in Office fixed for three years; In Pennsylvania there are Sheriffs for each County, In Connecticut also, In New York the same, in these colonies as in Massachusetts Bay sundry Acts have passed touching Sheriffs, their Time of Continuance in Office and ^{the} Duty thereof. In Maryland, when the Government of this Colony was immediately from the Crown, by act

Act of Assembly 1714/15. Power is given to the Governor to prolong the commission of Sheriffs; - In Virginia under an Act 22^d of His late Majesty, the several county courts are annually to present a list of three Persons to the Governor for his choice of one for each county: - And altho in the new colonies, while in a state of Infancy, the Crown has appointed a Provost Marshal thereto respectively with an annual Salary, yet as it was manifest that the colony of Quebec was not in the same Predicament with such as required to be settled and to be peopled a Representation was made to his Majesty and to the then Lords Commissioners of the Treasury from the Board of Trade recommending the Institution of Sheriffs in preference to the appointment of a Provost Marshall, as more proper and doubtless better adapted to the circumstances of this colony, but as a regular system of Government for the same was at that time under consideration, it is conceived, till that should be settled, it might be as well Pro Tempore to appoint a Provost Marshall.

That from such considerations regarding the circumstances of these several colonies, The Province of South Carolina beg leave to petition the
attention

attention of His Majesty, and His Ministry to the very greatly improved state of the Colony, with all the back Lands upon the confines thereof nearly laid out in Settlement together with the Number of Inhabitants settling thereon, and at the same time to alledge generally the Mischiefs and Evils to arise where the Redress of either private or publick wrongs and Offences cannot be obtained but with much travelling, great Expence, tedious Delay, and often times Hazard in attaining the end thereof, since without the least Intention to throw any Imputation upon the present Officers in such an extended, inhabited, producing and commercial Colony it will hardly be thought an unwarrantable supposition that by such an extent of Jurisdiction being lodged in any one single Man there may occur Circumstances of Negligence, Partiality and Prejudice. The Distance of the Custody together with the Insecurity thereof notwithstanding a general Security may be entered into by the Officer, is submitted to be a great Grievance in any Community. But as the Province of South Carolina when they are thus suggesting to your Lordship this general state of the Colony is a confidential Hope of Relief

lief in this Particular would be very unhappy to
 be thought asking or desiring anything that might
 in any wise carry an Appearance of Prejudice or
 Loss to His Majesty's Patente; if His Majesty shall
 in his Royal Wisdom and Goodness be graciously
 pleased that an Establishment of Sheriffs in the
 several Counties therein might take place for
 the future, The Inhabitants are willing to make
 a proper Compensation to the Officer for relinquish-
 ing his Office, who is also disposed and willing
 to treat with the Colony thereupon: The King's
 Revenue may then have the Benefit of a saving of Salary,
 and the Civil Government of the Province be very
 considerably and greatly improved.

For these several Reasons Your Memorialist
 humbly entreats of Your Lordship to take the
 Premises into your most serious consider-
 ation, presuming to hope in consequence for
 yr Lordship's endeavours and Assistance for
 Relief thereupon to the People of S^c Carolina

Wigmore Street
 July 11th 1767

Chas. Garth.

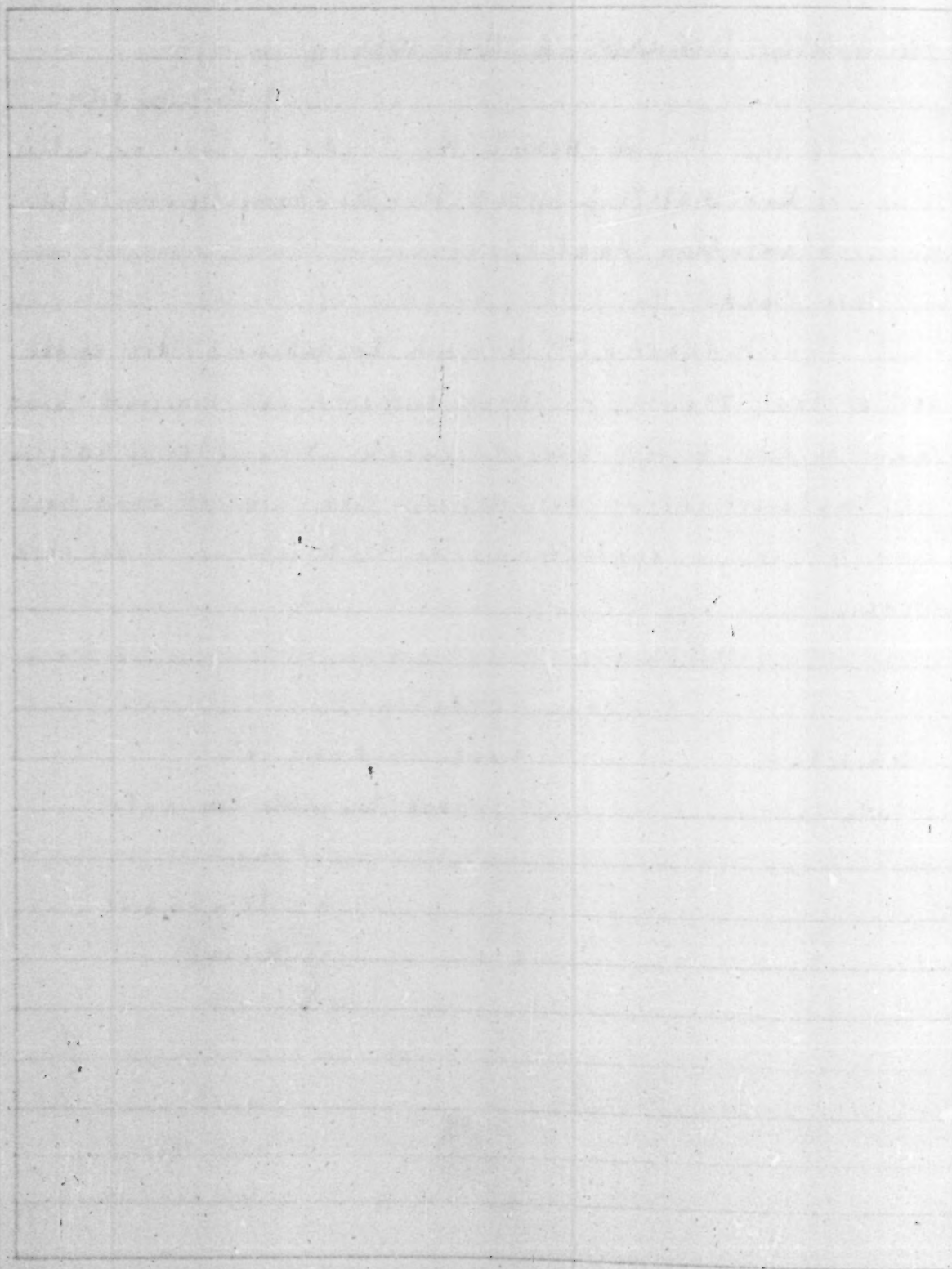
B. P. R. O. A. & M. J. Vol. 315

(11 July 1767.)

No 7.

Circular.

Dated 11th July 1767. Inclosing an Act
passed in the last Session of Parliament, and
a new Seal for the Colony of South Carolina,
with His Majesty's Warrant for using the same.



12011
B. P. R. O. So Carolina B. J. Vol. 29 p. 373.

(13 July 1767.)

To the Right Honble the Lords of the Committee
of His Majesty's most Honble Privy Council for
Plantation Affairs.

My Lords,

Pursuant to Your Lordships Order of the
30th of last Month, We have prepared, and herewith beg
leave to lay before Your Lordships, Draughts of Addition-
al Instructions to His Majesty's Governors of South Caro-
lina & Georgia, conformable to the Directions of the said
Order.

We are

Your Lordships

Whitehall

July 13. 1767.

most Obedient &

most humble servants

Clare

W^m Fitzherbert

J. Dyson.

Additional

Additional Instructions to Our Trusty
and Wellbeloved Charles Greville Montagu
Esq. commonly called Lord Charles Greville
Montagu, Our Captain General and Governor
in Chief of Our Province of South Carolina
in America Given at Our Court at St.
James's the day of in the Seventh
year of Our Reign.

It is our Will and Pleasure, and you are
hereby directed and required, forthwith upon the Receipt
hereof, to give positive Orders to the Proper Officers in
Our Province of South Carolina forthwith to prepare
Transcripts, duly authenticated, of all the Patents granted
under the Seal of that Province for Lands to the South-
ward of the River Altamaha and also of all Orders
Warrants and Proceedings thereupon, and to transmit
the same, with all convenient Dispatch to the Govern-
or or Commander in Chief of Our Province of Georgia
for the time being, that they may be entered upon
Record in the proper Offices in that Province.

2206
B. P. M. O. S. Carolina B. J. Vol. 21. N. 59.

Whitehall July 15th 1767

My Lords,

Mr. Garth, Agent for the Province of South Carolina, having presented a Memorial in Behalf of His Majesty's Subjects in that Colony, Copy of which I now transmit to your Lordships Petitioning that County Sheriffs may be appointed in lieu of a Provost Marshal on Terms mentioned, and for Reasons set forth in the Memorial; I have the King's Commands to refer the same to your Lordships, and I desire that you will Report to me, for His Majesty's Information, your Opinion thereon.

I am

My Lords

Your Lordships

Most Obedient humble Servant

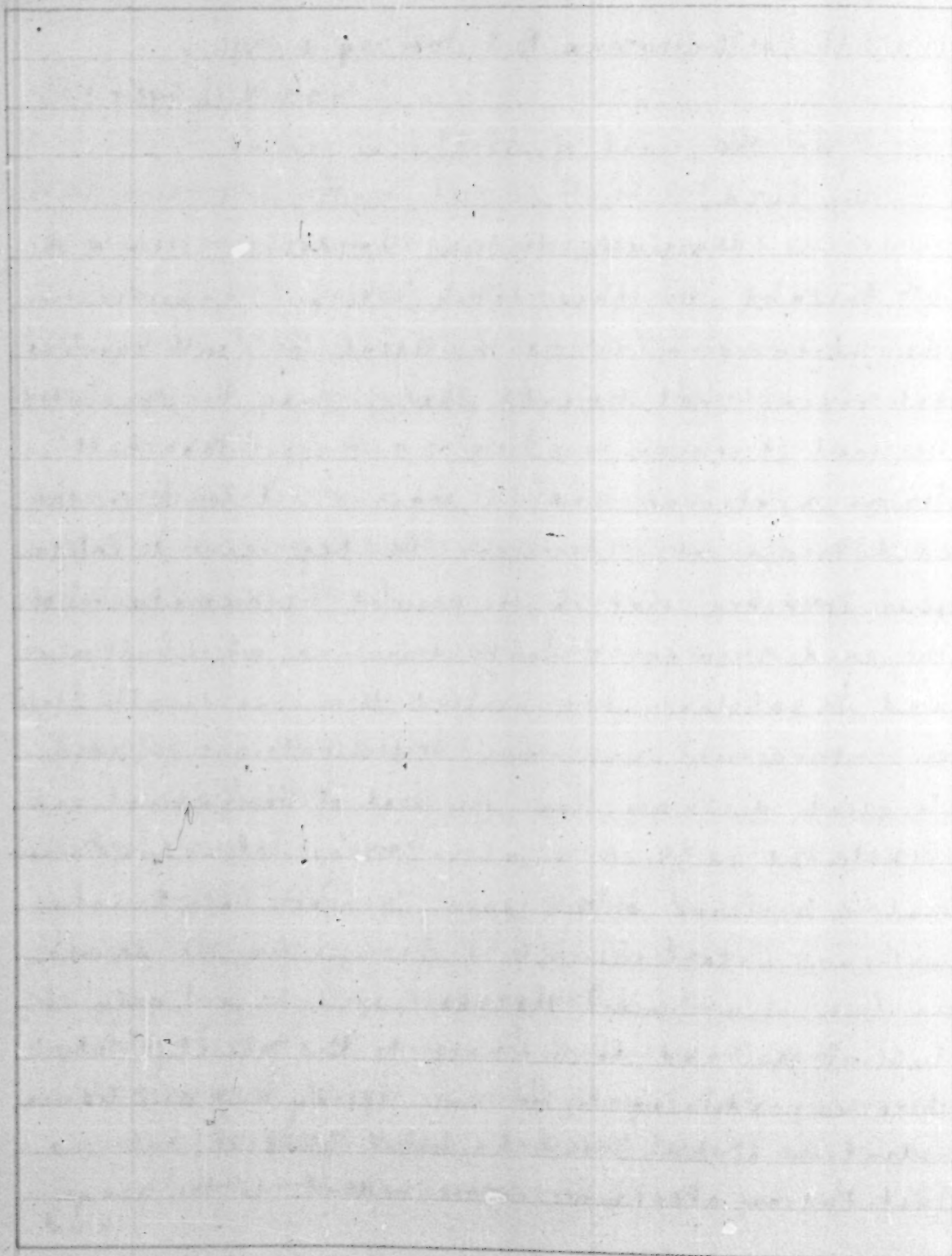
Shelburne.

Lords of Trade

Read July 15 }
Read - 21. } 1767.

(Enclosure.)

Copy Memorial of the Agent for South Carolina proposing that County Sheriffs should be appointed in lieu of the Provost Marshal. dated 11 July. 1767.
(N.B. This has already been copied under above date.)



407
B.P.R.O. S^c Carolina B.I. Vol. 29 p. 376

(22 July 1767.)

To the Earl of Shelburne &c &c
My Lord,

Agreeably to Your Lordship's Letter of the 15th Instant, We have taken into our Consideration the Memorial of Mr Garth, Agent for South Carolina, petitioning, that County Sheriffs may be appointed in that Province, in lieu of a Provost Marshall, on Terms mentioned and for reasons set forth in the said Memorial; Whereupon We beg leave to inform your Lordship, that in the present Circumstances of the said Province of South Carolina, where Cultivation and Inhabitation have arrived to a considerable State of Improvement, and where Settlements are extended to great distance from the Seat of Government, and established in great numbers; We are clearly of Opinion that a Division of the said Province into Counties with an Establishment of Sheriffs for the same in lieu of a Provost Marshall, will be not only of Publick Use and Convenience to His Majesty's Subjects there, as conducing to the more speedy and due Administration of Civil and Criminal Justice, but an Institution also more correspondent to the Usage
and

and Constitution of this Kingdom: And We are confirmed in this Opinion, as we find it agreeable to that of Our Predecessors in Office, stated in their Report to the Lords of the Council, dated the 2^d of September 1765, wherein, amidst various other Proposals relative to a general System of Judicature for the Colony of Quebec, they recommend the Establishment of County Sheriffs. We do not hesitate therefore to recommend it to your Lordship to advise His Majesty to instruct His Governor of South Carolina to give his Assent to an Act of Assembly for instituting County Sheriffs, in lieu of a Provost Marshall, (provided proper Compensation be made to the present Patentee for his Interest in the said Office,) in like form and manner, as has been done in other Colonies, in which case, it will be the duty of His Majesty's Governor to take care, that a Clause be inserted in the said Act of Assembly, suspending its Operation till His Majesty's Pleasure thereupon shall be known.

We are

Whitehall
July 22^d 1767. |

My Lord,
Your Lordships
most obedient & most humble
Servants
G. C. L. R.
Wm Fitzherbert.
Thos Robinson.

B.P.R.O. S. Carolina B.I. Vol. 29. p. 319.

(24 July 1767.)

To the Kings most Excell^t Majesty.

May it please Your Majesty.

In obedience to Your Majesty's Order in Council, dated the 26th of last Month, We have prepared and herewith humbly beg leave to lay before your Majesty, a Draught of an Additional Instruction to the Governor of your Majesty's Province of South Carolina, conformable to the Directions of the said Order, and likewise a Draught of a like circular Additional Instruction to such other of your Majesty's Governors in America, as have not received such an Instruction already

Which is most humbly submitted
to your Majesty's

Whitehall
July 24th 1767 }

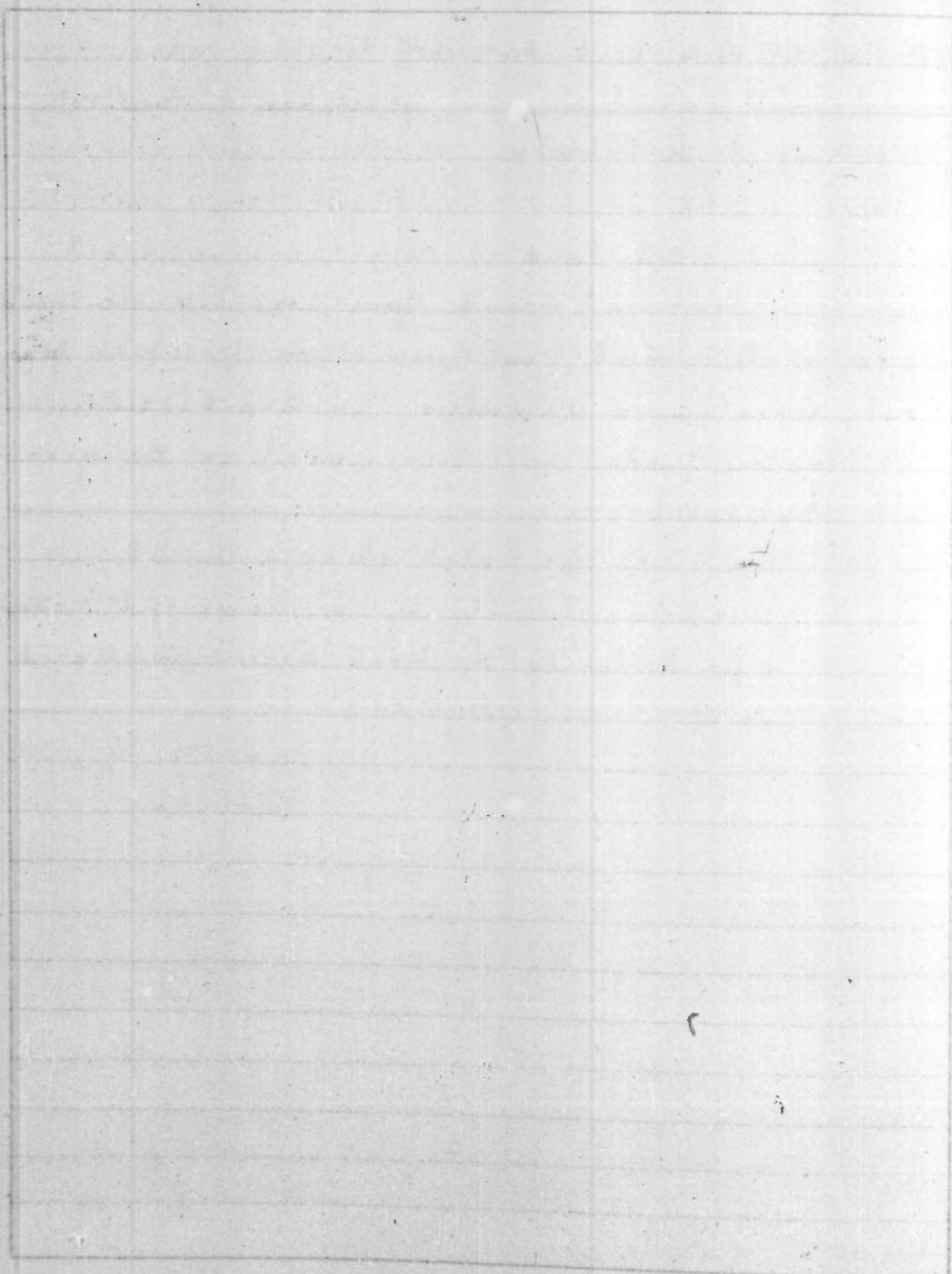
John Roberts.
W^m Fitzherbert.
Tho^s Robinson.

Additional Instruction to our Trusty and Wellbeloved Charles Greville Montagu Esq^r commonly called Lord Charles Greville Montagu, Our Captain General and Governor in

in Chief of Our Province of South Carolina
in America, Given at Our Court at St
James's the day of in the
Seventh Year of Our Reign.

Whereas it hath been represented unto Us,
that an Act was passed in Our Province of South
Carolina in August 1765 intituled, "An Act for
establishing a Parish in Berkeley County by the
Name of St Matthew, and for declaring the Road
therein mentioned to be a publick Road", by which
it is provided, that Two Members shall be elected
to serve in general Assembly for the said Parish
in manner therein directed; And Whereas We have
thought fit, upon a Consideration of the Incon-
veniences, that would attend an Increase of the
Representative Body of the said Province, to declare
Our Royal Disallowance thereof, in order therefore
to prevent any Act of the like Nature and Import
from being passed for the future; It is Our Will
and Pleasure, and We do hereby require and com-
mand, that you do not, upon any pretence what-
soever, give your Assent to any Law or Laws to
be passed in Our said Province, by which the
Number

411
Number of the Assembly shall be enlarged, or diminished; the Duration of it ascertained, the Qualifications of the Electors, or the Elected fixed, or altered; or by which any Regulations shall be established with respect thereto, inconsistent with Our Instructions to you Our Governor, as prejudicial to that Right or Authority, which you derive from Us in virtue of Our Royal Commission and Instructions.



412
B. P. R. O. A. & H. S. Vol. 315.

Whitehall 7th Aug. 1767.

Gove of South Carolina

(No 8.)

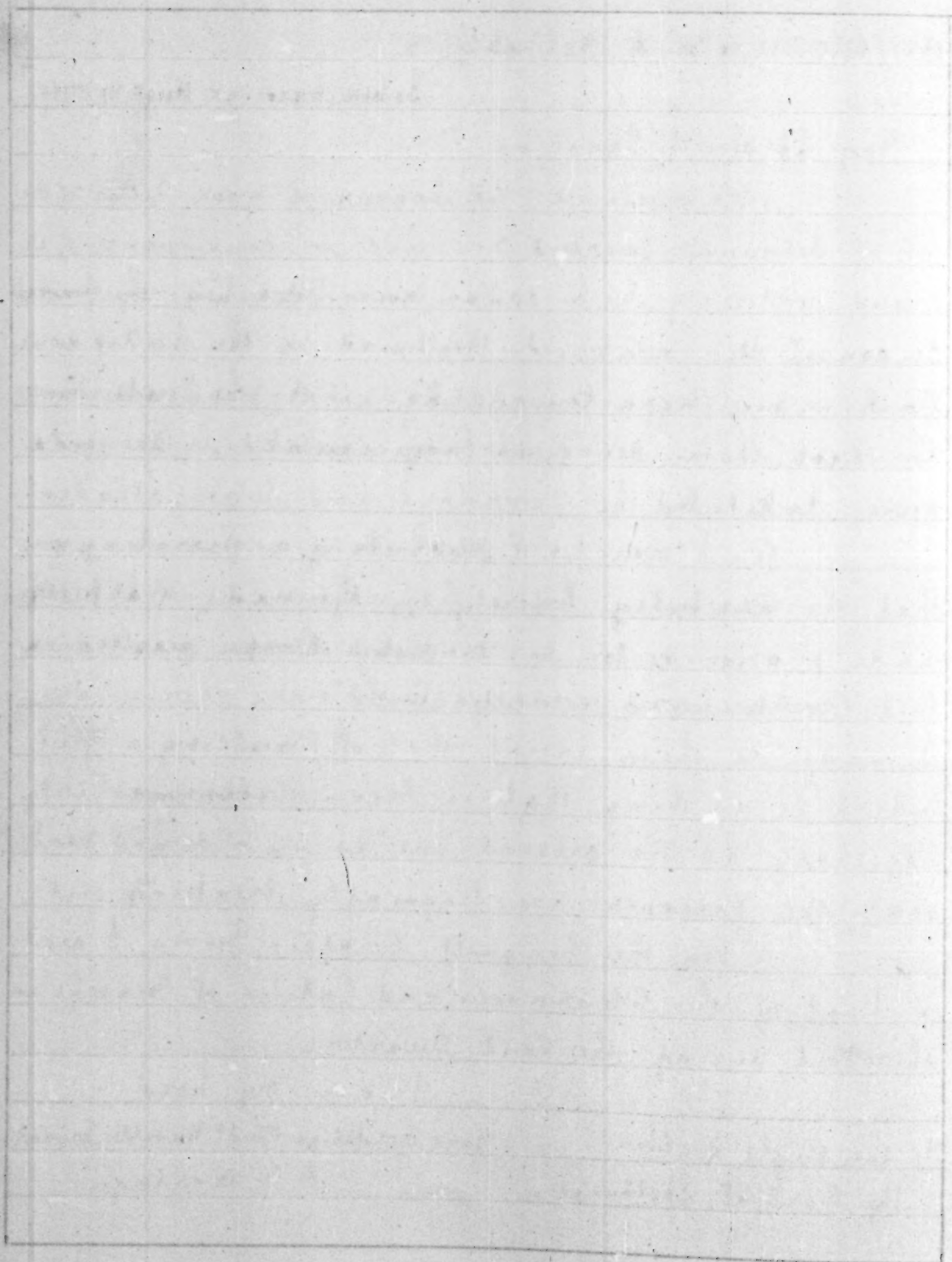
My Lord,

I send Your Lordship the Inclosed
Order of His Mats in Council on the 26th of June
last, repealing & annulling an Act passed in
the Province under your Government in the year
1765, Intituled,

- An Act for Establishing a Parish in
- Berkeley County by the name of St Matthew
- & for declaring the Road therein mentioned
- to be a Publick Road

I am &c

Shelburne



B. P. R. O. A. & H. I. Vol. 223.

No. 5.

South Carolina Aug^t 14 1767.

My Lord,

I received the honour of your Letter of the 19^t of February, marked No. 6 and in consequence of it should certainly have taken every step in my power to conciliate and quiet the Minds of the Indians, within my Departments, had, not the Disturbances amongst them, being already appeas'd by the measures taken by the Governors and Superintendent.

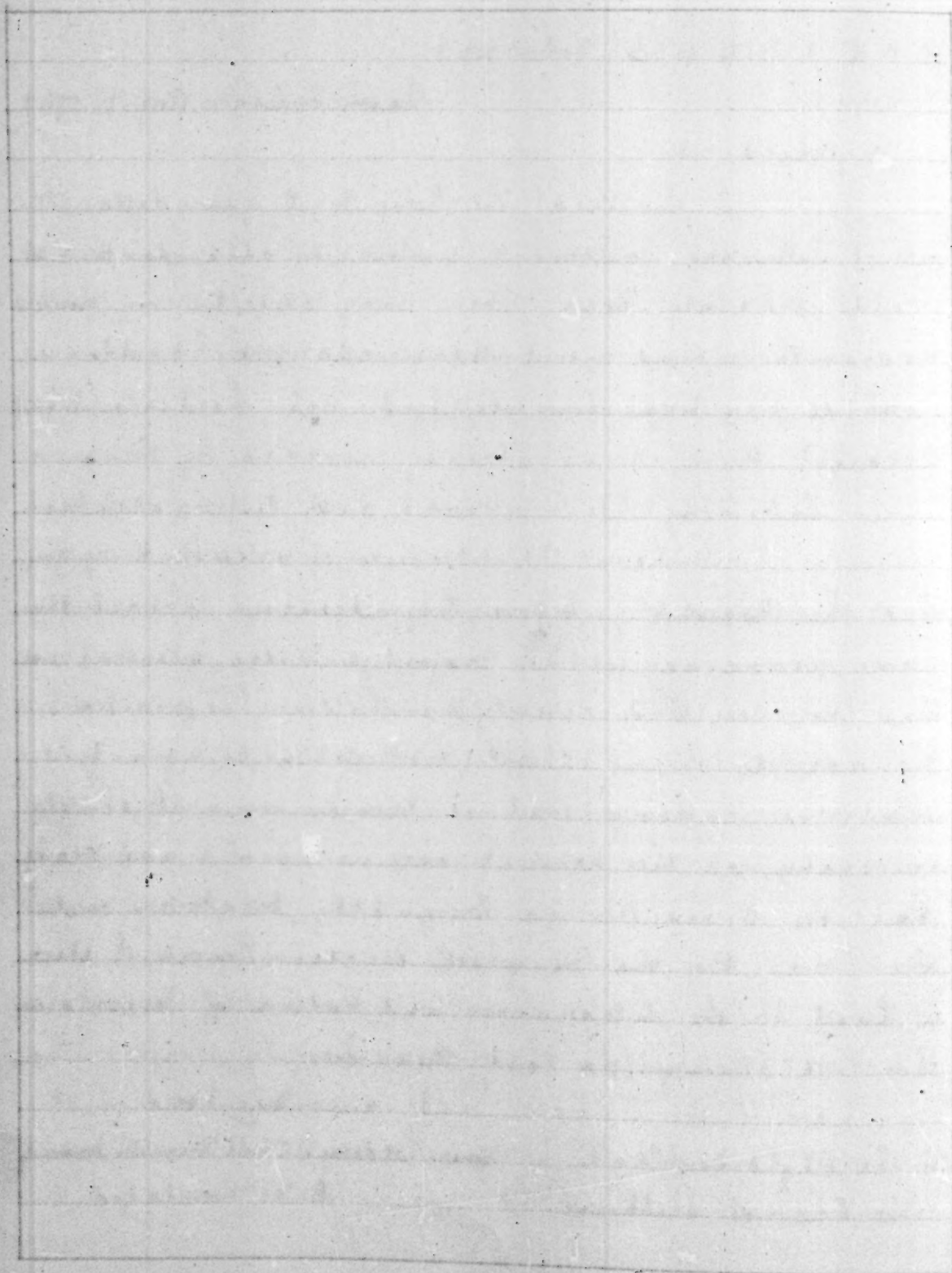
I have the pleasure of acquainting you that the Assembly, before they adjourn'd, cheerfully made provision for His Majesty's Troops, quarter'd in this Province, and comply'd with every requisition I made to them, except that of Building a Jail, which is a thing that is become now absolutely necessary, as the present one is so old and weak, that the Prisoners are frequently breaking out.

By the Pacquet, Captain Groves, I send a List of the Clearances and Entries of Vessels in this Port during the last Quarter.

I am, My Lord

To the Right Honble
The Earl of Shelburne.

Your Lordship's Obed^t Humble Servant
B. B. Montagu.



B. P. R. O. A. & N. S. Vol. 223.

No. 6.

Charles Town Oct. 5th 1767.

My Lord,

I think it my Duty to acquaint you with the following matters relative to His Majesty's Custom House here, tho' I shall not trouble you with many circumstances, as the Collector is gone to England, and will give your Lordship a fuller Detail.

The Honble Wm Moore Esq^r Collector of His Majesty's Customs at this Port, appointed R. H. Hatley Esq^r his Deputy, thinking it necessary to leave this Province on account of many disputes between him and the Gentlemen here: soon after his arrival here the Merchants and Planters, objected to several Fees that were taken at the Custom House, and some of the Principal Merchants prosecuted him upon a supposition of his having demanded and taken more than was his due; of which he was acquitted after a long Trial in the Court of Admiralty: since that time Mr. Roupell, a Searcher, having seiz'd a Schooner by Order of the Collector, and in consequence of it a Trial, being had, it was deem'd not a legal seizure, upon which the Owners have arrested the Searcher

Searcher for £5000 Damages; and the Attorney General has undertaken his cause, as no other Lawyer here, would be concerned for him, lest they should disoblige the Merchants & Planters. I must now mention that I think His Majesty's Service in regard to the Custom House, liable to suffer, for want of Gentlemen of the Law to advise with in any difficulties, as the Attorney General, being Judge of the Admiralty C: does not chuse to give his Opinion in any case that may afterwards be tried in that Court: and the other Lawyers decline being concerned for any of his Majesty's Officers in any case relative to Custom House Duties: As to the Office of Advocate General, no Salary being annexed to it and very small Fees attending it, it is very difficult to find any Lawyer of Eminence that will accept of it.

I have had many Complaints made to me since I have been in this Province of Mr Delagay's neglecting to do his Duty as Searcher at Port Royal, and being informid that he has for some time been in Trade there, as a Merchant, I judg'd it would be for the good of his Majesty's Service to suspend him, which I accordingly did,
on

on the eleventh of September last, and have appointed Joseph Jenkins Esq^r (a person that I believe will faithfully discharge the Duties of that Office) to act in his stead, untill his Majestys pleasure is known.

I am

My Lord

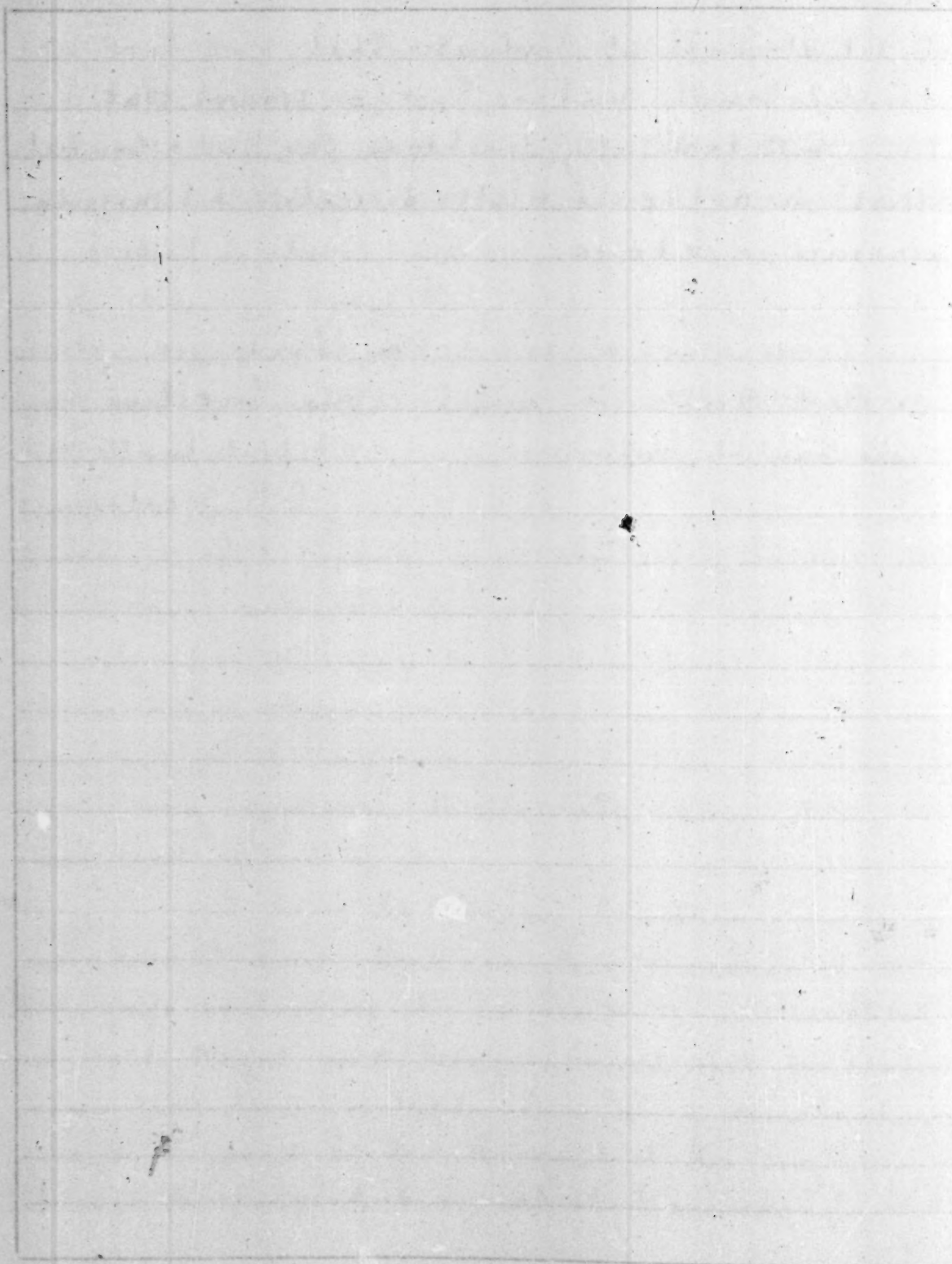
To the Rt Honble

The Earl of Shelburne.

Your Lordships

Obedient, humble Serv^t

C. G. Montagu.

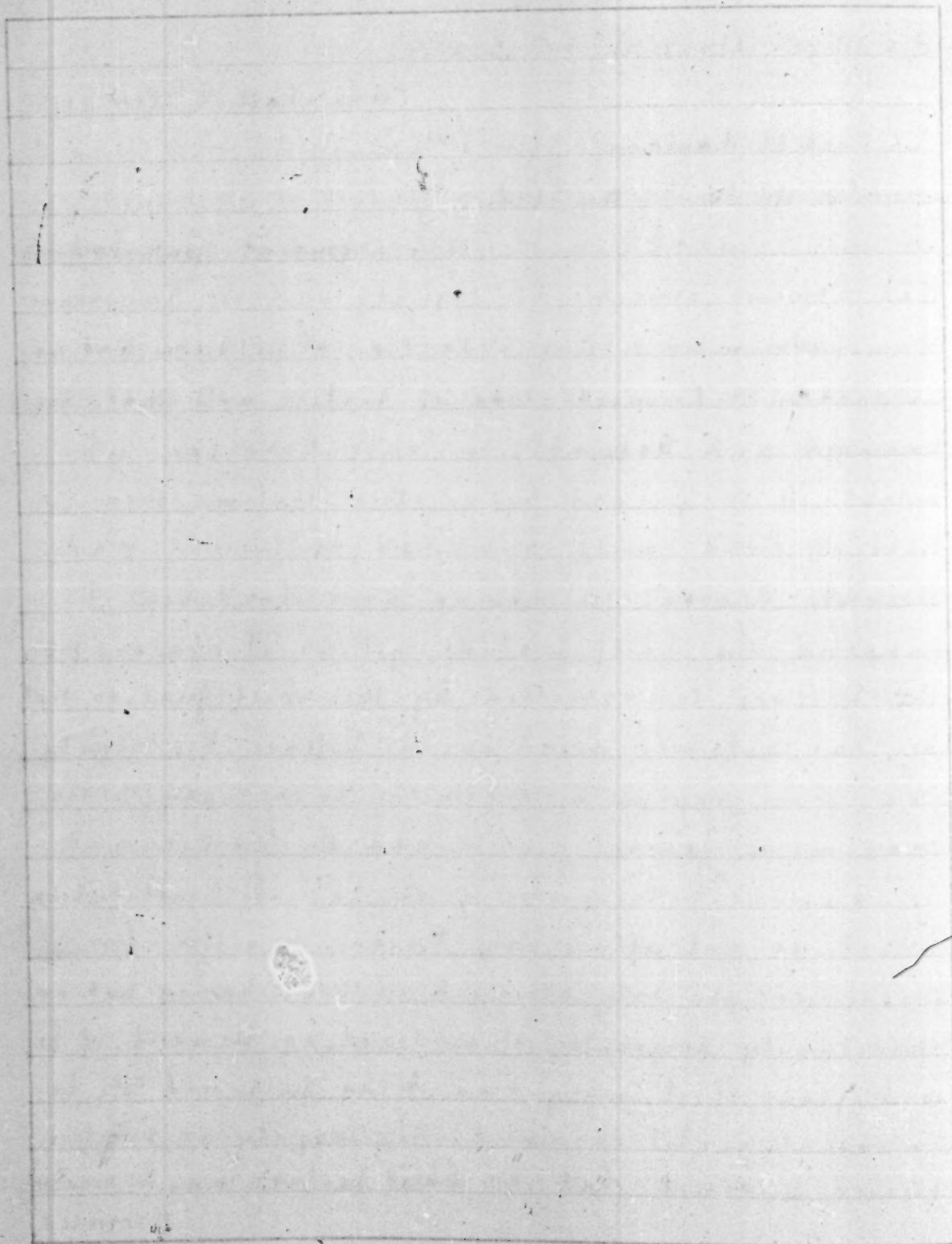


417
B.P.R.O. A. & H.S. Vol 223

(5 Oct. 1767)

Affidavit of James Donavan, on a Commit-
ment made by the Chief Justice of S. Carolina.
with Remarks on the Chief Justice's Defence.

(consisting of six large folio pages of closely
written M.S. and which it has not been thought
necessary to copy.)



B.P.N.O. A. & N. S. Vol. 223.

Whitehall 8th Oct: 1767.

Lt. Chas. G. Montagu

(No 9.)

My Lord,

I am to acquaint your Lordship that however sensible His Majesty is of the Importance of maintaining a due Execution of the Laws and an impartial Administration of Justice, and that the Council and Assembly of South Carolina, who ought to be guided by no other Motives than the Publick Good, must have had sufficient and Weighty Reasons for moving your Lordship to suspend the Chief Justice, yet as it appears from the Defence transmitted by the Chief Justice that he has not been heard in his Defence. His Majesty can never approve a Proceeding so contrary to the Maxims of general Justice, and the Practice and Fundamental Principles of the English Constitution, which do not allow any Persons to suffer for Misdemeanors only alledged without having had an opportunity personally of vindicating Himself, if he is desirous of it, every Man being presumed to be innocent until convicted. His Majesty is therefore pleased to direct that the Chief Justice may be regularly
proceeded.

proceeded against before the Council, and heard in his Defence, in consequence of the Complaints brought against Him, and that Your Lordship shall either continue, or take off the Suspension (till the Kings Pleasure shall be known) according as he shall be found culpable or Innocent, transmitting to me, for His Majesty's Information, a full account of the process, and his defence. —

In the Chief Justice's Memorial to Your Lordship he complains that he never could obtain a sight of the greater part of the Laws of the Province of South Carolina. — I need not observe to you how necessary it is that all acts of Assembly should be made as publick as possible; for how can any Person conform to a Law with which he has not the means of being acquainted. —

As the first intention of making Laws is, that they may be promulgated, and as numberless and vexatious suits and Litigations must be the consequence of Laws remaining so much in the dark, as the Chief Justice asserts those of South Carolina do; I cannot sufficiently recommend to Your Lordship to use your endeavours, leaving the Time and Mode to your Discretion.

creation, to procure a speedy & authentick Publication of such of the Acts of Assembly in South Carolina as have never been printed.

Mr Garth having presented a Memorial to the King in behalf of the Province, praying that the Office of Provost Marshall may be changed into that of Sheriffs for the several Counties, which Memorial has been referred to, and reported upon, by the Lords Commissioners of Trade; I am commanded by His Majesty to acquaint you that His Majesty has no objection to the passing of an Act of Assembly for that purpose, provided a Compensation be made to the present Patentee.

From this Condescension of the King, and fresh proof of Attention to whatever can conduce to the happiness of his People, I am convinced that the Province of South Carolina, which is at present so immediately the object of his Royal Care, will not fail to manifest that Gratitude and Affection which they cannot avoid feeling on this occasion, by every Mark of Duty & Confidence, which are so justly due to the Best of Sovereigns

I am &c
Shelburne

P.S. Your Lordships Letter would have been answered sooner, only it was addressed to the Board of Trade, and no Notice sent to me agreeable to the late order concerning the correspondence.

B. P. M. O. A & N. S. Vol. 223.

Charles Town. Oct. 8th 1767.

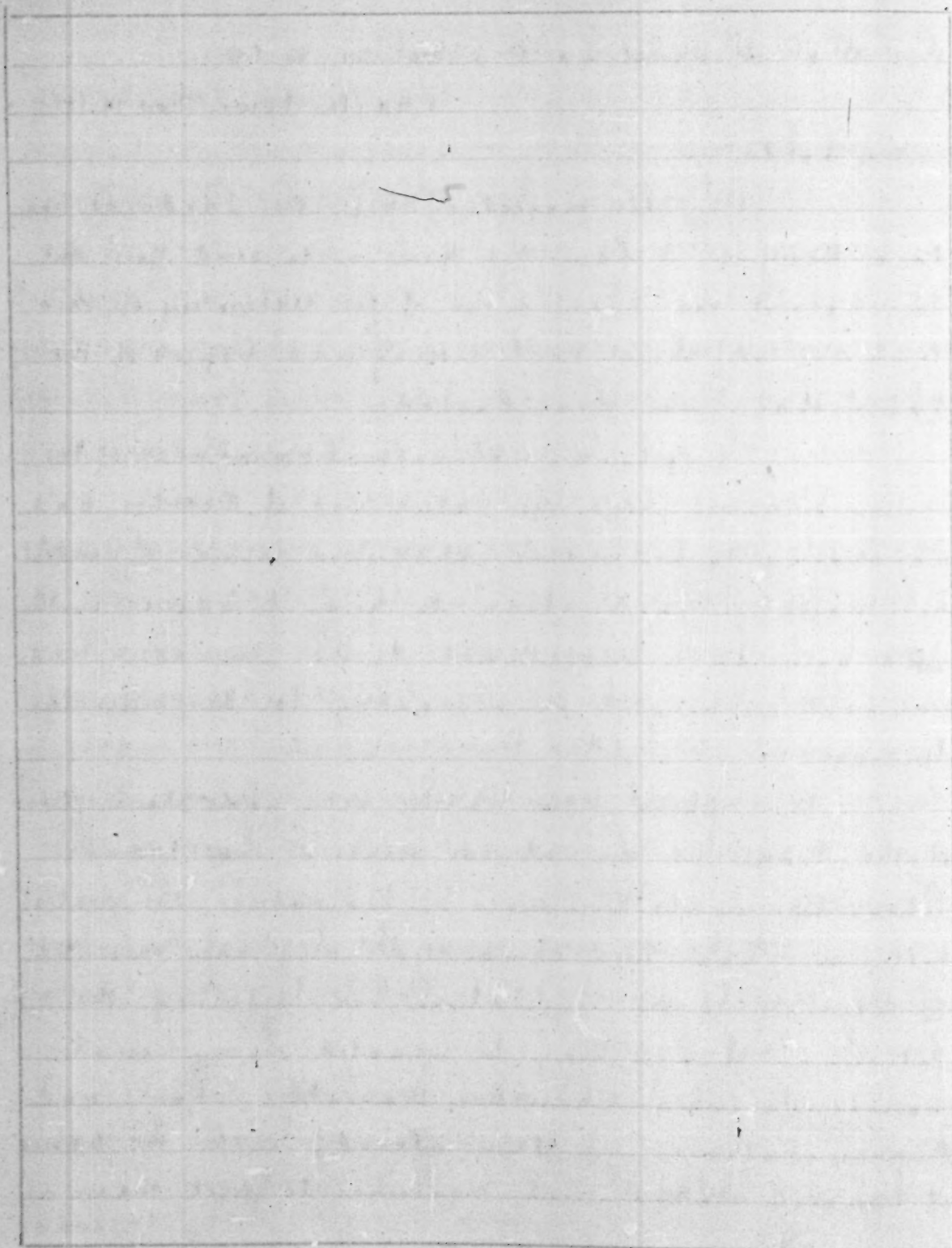
My Lord,

Since I had the Honour of writing a former letter to you by the same Packett as conveys this, I have had information of some Riots and unlawful Assemblies of the Inhabitants dwelling about one Hundred and Fifty miles from this place. I have not yet been able to learn the names of any persons of consequence concern'd direct, but shall do my best endeavour to suppress it, and hope, by the next opportunity to send you an account of their being dispersed. The number of Persons that have rose in the Country are supposed to amount to Fifteen Hundred, and have signed a Paper to support one another in Defiance, of the Civil Magistrates, and against the Laws of the Country.

I have sent you the List of the Entries of the Vessels inwards to this Port & their Discharges for the last Quarter.

I am, My Lord
your Lords most humble Servant
C. G. Montagu.

To the Earl of Shelburne.



B.P.R.O. S. Carolina B.T. Vol 21. N 62

Charles Town Nov. 10 1767

My Lords,

By his Majesty's Ship, the Sardoine Captain Hawker, I have the Honour to send you the Journals of the Proceedings of the Assembly of this Province at their last sitting and Copies of the Laws that were then passed.

Captain Robinson, Commander of the Fowey arrived here the latter end of October, and according to his orders, produced to me in Council his Majesty's instruction to him, to advise with and give such assistance to the Governour and Council as might be necessary for his Majesty's Service. -

There have lately been some insurrections of the People in the interior parts of this Province where for wants of Courts of Judicature, the greatest villainies have been committed: they have presented a Petition to the Legislature here desiring the following things may be granted them, County Courts, Parishes, Churches, Ministers, Schools, and Representatives. I have already with the Advice of Council taken such measures to quiet them as was

was in my Power, without the assistance of the Assembly. They met on Thursday last, and I recommended to them the early and serious consideration of these Disturbances, and I don't doubt but in a short time the Riots will be entirely suppressed.

At the General Sessions held here last week there were no less than Twenty eight Prisoners tried, Seven for Murder, the greatest part of them from the back parts of this Province.

I am

My Lords

Your most

Humble Servant

C. G. Montagu

The Right Honble The Lords
Commrs of Trade &c.

Recd Feb. 1

Read Apl 12 } 1768.

(Note - A similar letter sent to Lord Shelburne.)

1425
B. P. K. O. A. & H. J. Vol. 224. A. 6.

Charles Town 14 Nov. 1767.

He q.

My Lord,

At the October Sessions held here Mark Nettles and Thomas Floyd were found Guilty of Murder, and received their Sentence accordingly, but were both recommended to Mercy by the Court. It appeared upon the Trial that Mark Nettles, was assisting a Constable to apprehend a Horse-stealer in the Back Countries, and in the pursuit he fired his Gun and killed him.

I applied, in behalf of the Crown to the Attorney General, for his Opinion relative to these two persons, which was, that from the evidences that appeared he thought they were both objects worthy the Royal Clemency. I have therefore, reprieved them both, untill I can receive his Majesty's instructions concerning them.

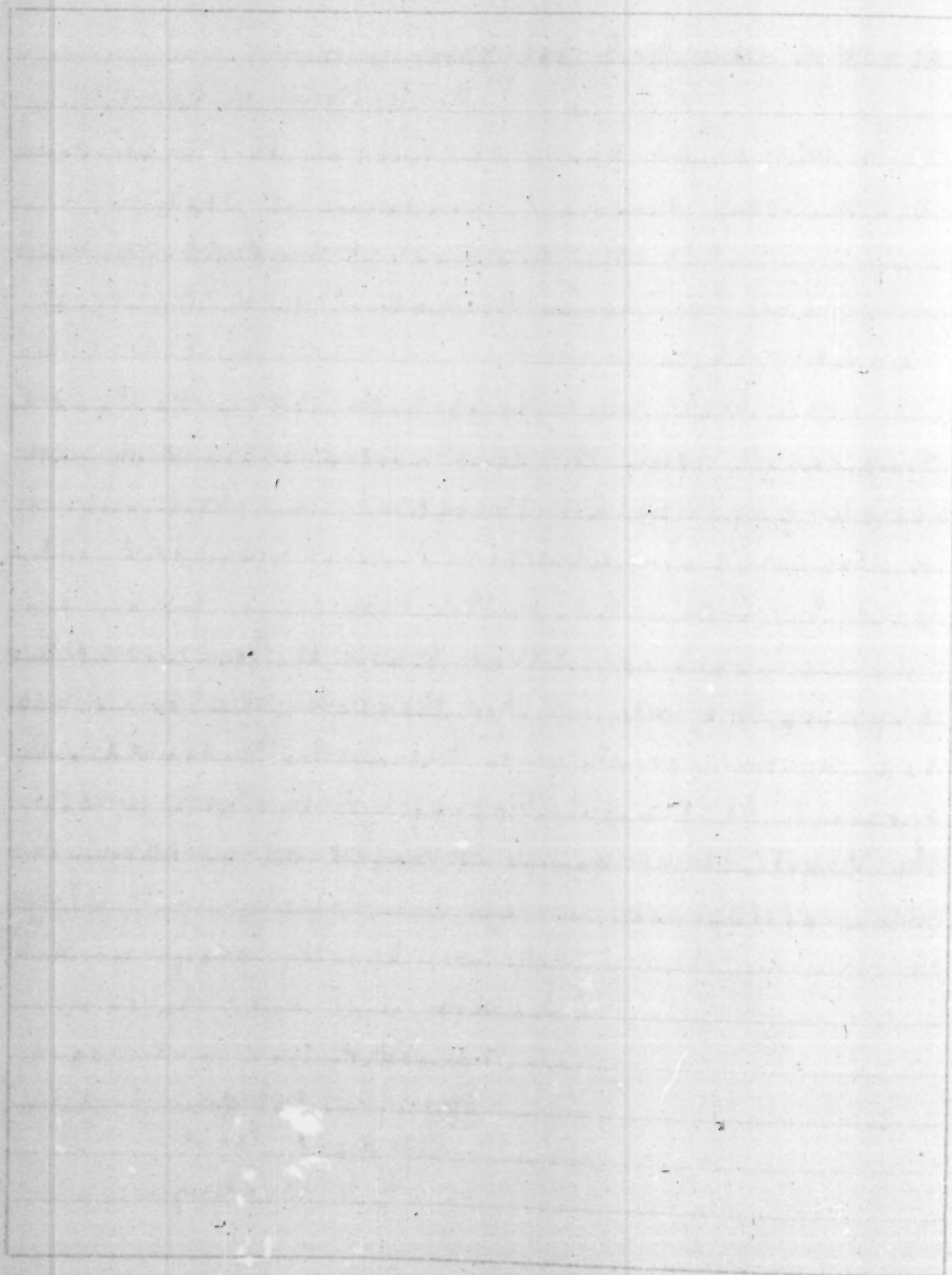
I am

My Lord

Your Lordships

Obedient Servt

C. G. Montagu



1426
B. P. R. O. A + N. I. Vol. 224. A. 2

(no date see A. 1.)

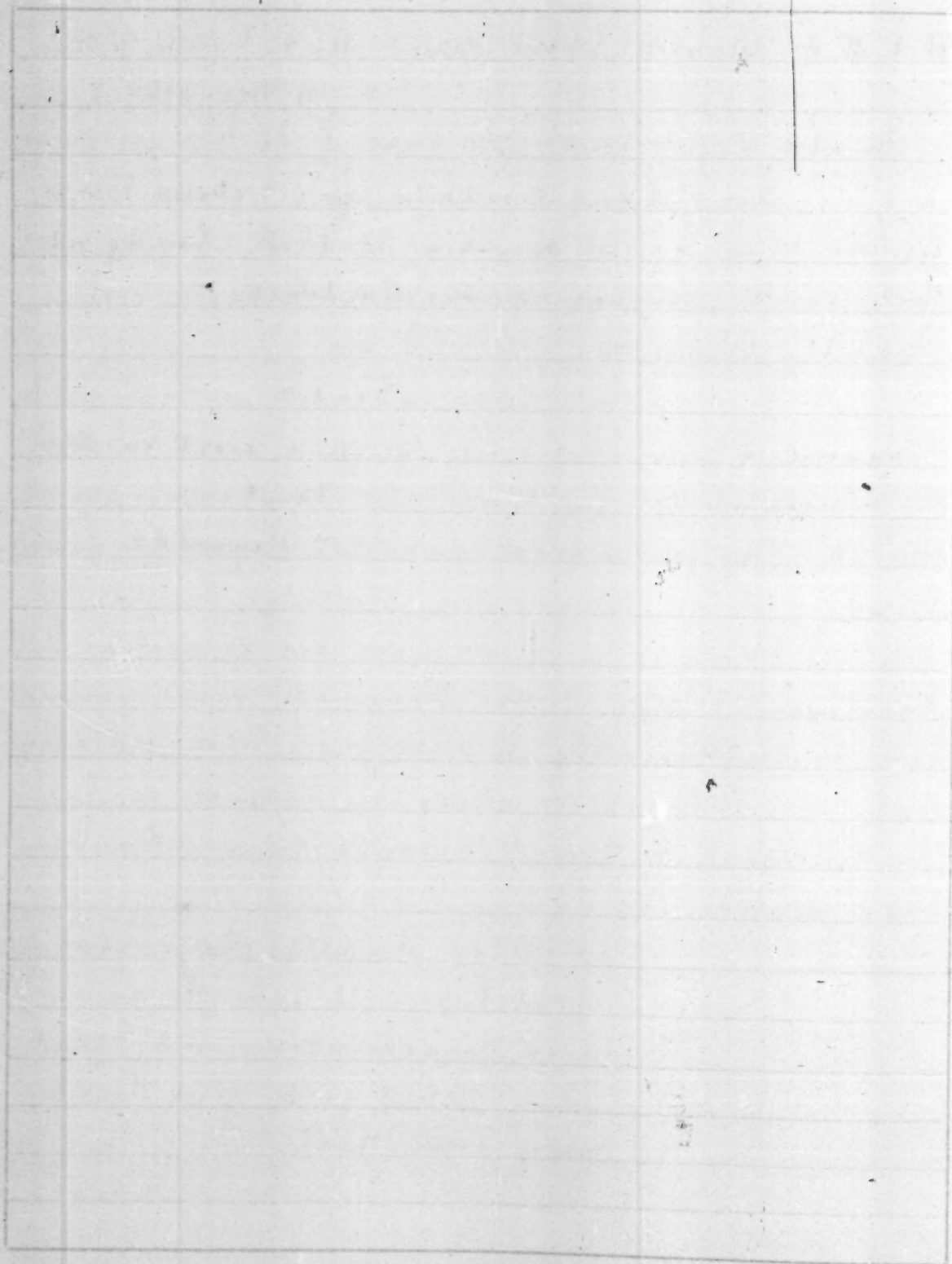
To the Right Honble The Earl of Shelburne. One of
His Majesty's Principal Secretaries of State.

The Memorial of Lord Charles Mont-
ague Governor of South Carolina.

Humbly Sheweth,

That being detained in England by
Government after the time agreed & Fixed on with
the Merchant for his Departure. The Demurrage of
the ship (as per Account annexed) amounted to Two
hundred & Ten Pounds Ten Shillings, besides his
private Expences, - That since his Arrival at South
Carolina an Offer of One Thousand Pounds was made
him by the Assembly to Defray his Extraordinary
Expences, but not thinking it agreeable to his
Instructions to Accept it, could do no otherwise
than decline it.

Therefore humbly prays your
Lordship will take the same
into Consideration and Grant
such Relief as to your Lordship
may seem meet.



1127

B. P. R. O. A. & H. S. Vol. 224. A. 1. Incls to A. 2.
(4 Dec. 1767.)

Gentle

Lord Charles Montagu was Debited £210.10.
for the Demurrage of the Ship Fonthill laying at
Portsmouth waiting on His Lordship.

I am

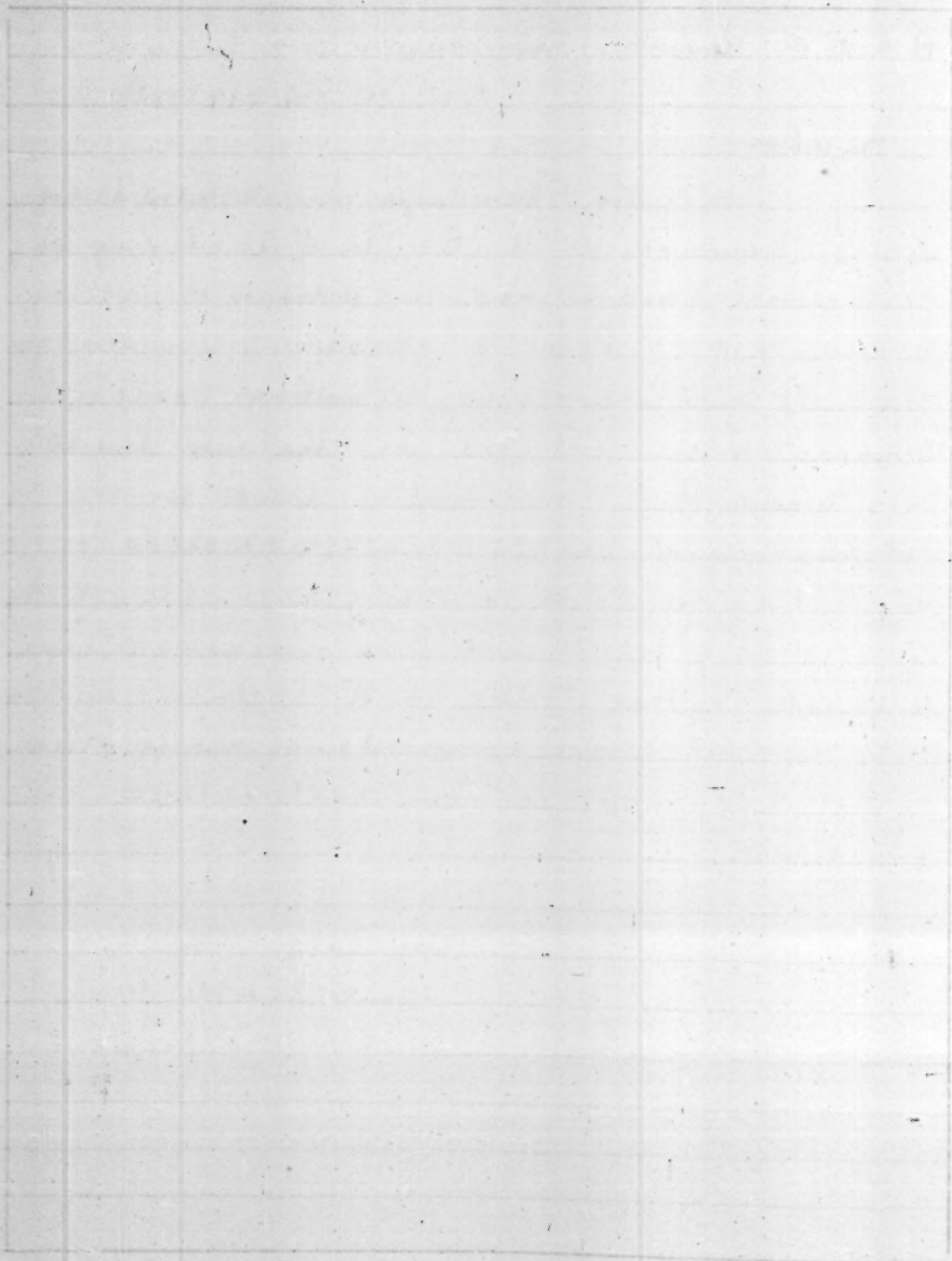
Gentle

Mansell St.

4 December 1767.

your most humble
Servt

W^m Reynolds



B.P.R.O. A. & H. J. Vol. 224. A.3.

Charles Town 14 Dec: 1767.

My Lord,

By the Grantham I send you a copy of the Records of all the Grants of Land, since May

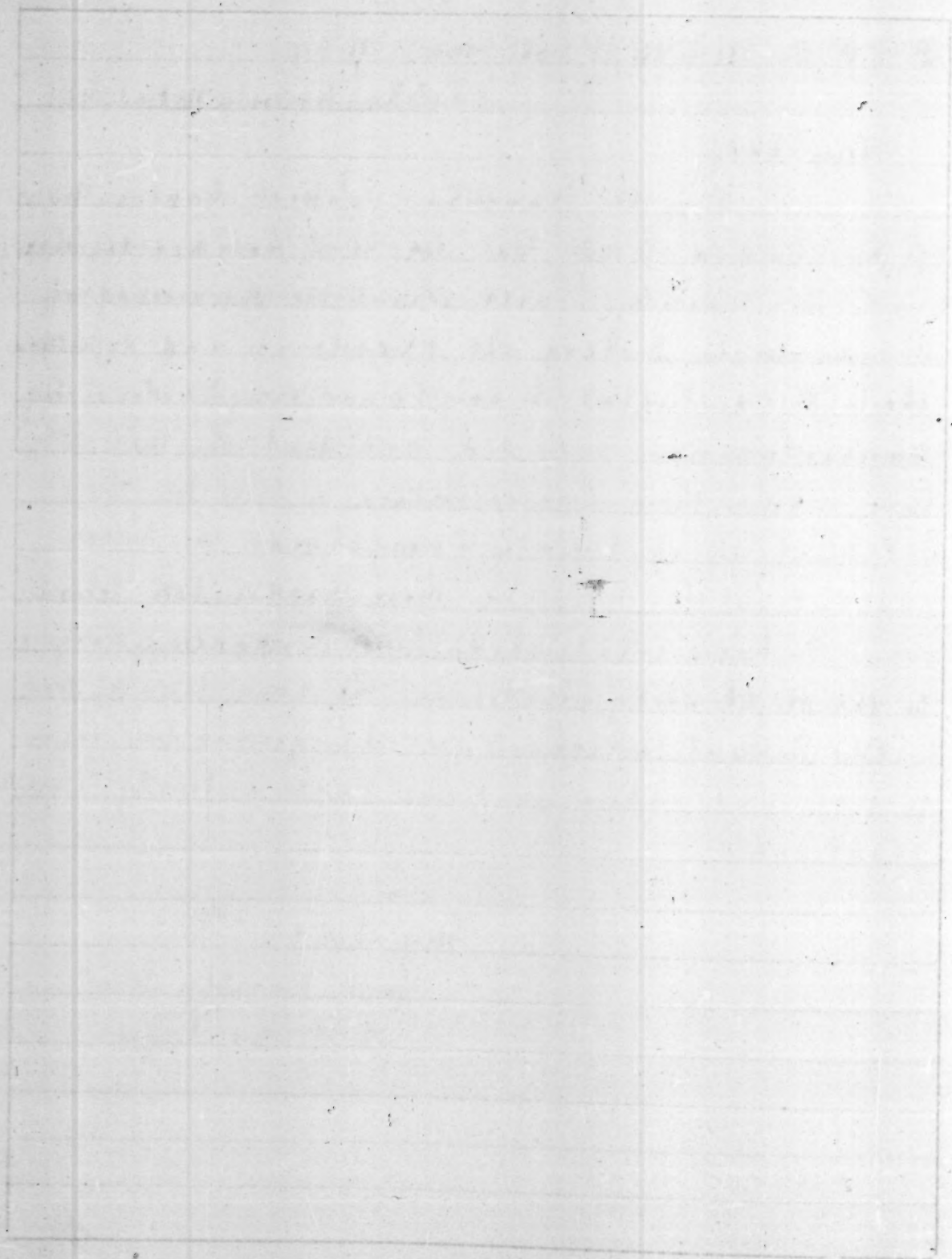
Since I had the Honour of writing to you last, I have the pleasure to acquaint you that the disturbances in the interior parts of this Province are now subsided: and that the Assembly have, under their Consideration, a Bill for the establishing of County Courts; and the better regulating the Police in those parts: till which time I have established Two Companies of Rangers to assist the Magistrates, in the execution of their Duty. without which it was dangerous for them to Act and indeed in some parts entirely impracticable.

I am

My Lord

Your Humble Servt

C. G. Montagu.



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B. P. R. O. A. & N. S. Vol. 224. A. 4.

Charles Town 14 Dec. 1767.

My Lord,

By the Grantham Packett, Captain Jones
I received a New Seal for this Province together
with His Majesty's Instructions for the using of
the same in sealing all Grants &c and to return
the old one, which I have accordingly done by
Captain Jones.

I am

My Lord

Your most Humble Servant

C. G. Montagu

To the Right Honble
The Earl of Shelburne.